

# **Exhibit B**

Videotaped Deposition of  
**Virginia B. Evans**  
June 01, 2021  
Volume I

United States of America  
vs.  
Gilead Sciences, Inc.



<p style="text-align: right;"><b>Page 1</b></p> <p>1 IN THE UNITED STATES DISTRICT COURT  2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA  3 UNITED STATES OF AMERICA, )  4 CALIFORNIA, ILLINOIS, NEW )  5 JERSEY, NEW YORK and TEXAS, )  6 ex rel. CHRIS PURCELL and )  7 KIMBERLY GROOME, ) Case No.:  8 ) 2:17-cv-3523-MAK  9 Plaintiffs, )  10 )  11 vs. )  12 )  13 GILEAD SCIENCES, INC., )  14 )  15 Defendant. )  16 _____)  17  18 REMOTE VIDEOTAPED EXPERT DEPOSITION OF  19 VIRGINIA B. EVANS  20 VOLUME I  21 TUESDAY, JUNE 1ST, 2021  22  23 REPORTED BY:  24 MONICA LEPE-GEORG  25 CSR No. 11976  APPEARING REMOTELY FROM CLOVERDALE, CALIFORNIA    Job No. 10083544</p>	<p style="text-align: right;"><b>Page 3</b></p> <p>1 REMOTE APPEARANCES  2  3 FOR PLAINTIFFS:  4 SHEPHERD, FINKELMAN, MILLER &amp; SHAH, LLP  5 BY: JAMES C. SHAH, ESQ.  6 1845 Walnut Street, Suite 806  7 Philadelphia, Pennsylvania 19103  8 Telephone: 610.891.9880  9 E-mail: jshah@sfmslaw.com  10  11 FOR DEFENDANTS:  12 PAUL WEISS  13 BY: RANDY LUSKEY, ESQ.  14 943 Steiner Street  15 San Francisco, California 94117  16 Telephone: 628.432.5112  17 E-mail: rluskey@paulweiss.com  18 - and -  19 PAUL WEISS  20 BY: JIN U. KIM, ESQ.  21 1285 Avenue of the Americas  22 New York, New York 10019-6064  23 Telephone: 212.373.3808  24 E-mail: jkim@paulweiss.com  25</p>
<p style="text-align: right;"><b>Page 2</b></p> <p>1  2  3 REMOTE VIDEOTAPED EXPERT DEPOSITION OF  4 VIRGINIA B. EVANS, VOLUME NO. I, held at the  5 location of the witness, taken on behalf of  6 Defendant, beginning at 10:15 a.m. and ending at  7 6:40 p.m., on Tuesday, June 1st, 2021, before Monica  8 Lepe-Georg, Certified Shorthand Reporter No. 11976.  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;"><b>Page 4</b></p> <p>1 REMOTE APPEARANCES (Continued):  2  3 FOR DEFENDANT:  4 ORRICK, HERRINGTON &amp; SUTCLIFFE LLP  5 BY: MARNEE R. RAND, ESQ.  6 Columbia Center  7 1152 15th Street, N.W.  8 Washington, D.C. 20005-1706  9 Telephone: 202.339.8536  10 E-mail: mrand@orrick.com  11  12 Also Present:  13 Spencer Benveniste, Videographer  14 Rachel Gupte  15 Alvina Hou  16  17  18  19  20  21  22  23  24  25</p>

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1 BY MR. LUSKEY:  
 2 **Q. You didn't review the -- the data or the**  
 3 **spreadsheets that Gilead collected and produced on**  
 4 **that topic?**  
 5 A. I believe I did, but I don't -- I can't  
 6 recall at this point. I can't recall the  
 7 specific...  
 8 **Q. All right. You didn't -- you didn't cite**  
 9 **to this document in your report, right?**  
 10 A. I don't think so.  
 11 **Q. Why not?**  
 12 A. I had thousands of documents that I was  
 13 looking at, sir, and I just -- you know, I just  
 14 didn't cite to all of them, so...  
 15 **Q. Right, but those where you found examples**  
 16 **of, sort of, effective compliance communication**  
 17 **coming from senior management, did you think that**  
 18 **those would be important to cite in your objective**  
 19 **review of the compliance program?**  
 20 MR. SHAH: Objection.  
 21 THE WITNESS: I think I would have, if it  
 22 had been an effective communication. I did not  
 23 consider this an effective communication because,  
 24 like many other compliance issues at Gilead, it was  
 25 not implemented and there didn't seem to be any

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1 corrective action and continuous improvement in this  
 2 area.  
 3 BY MR. LUSKEY:  
 4 **Q. You say it was not -- excuse me?**  
 5 A. I'm sorry?  
 6 **Q. Oh, so you say it was not implemented.**  
 7 **This document talks about how if there is a TS that**  
 8 **exceeds the meal limit, there will be an e-mail**  
 9 **communication and verbal coaching from sales**  
 10 **leadership and business conduct. Didn't you review**  
 11 **the e-mails showing that that happened each time**  
 12 **there was an overage?**  
 13 A. I didn't review all of the e-mails, no. I  
 14 will say I -- I looked for a therapeutic specialist  
 15 being let go because of a consistent pattern of  
 16 noncompliance, whether it be meal overages or other  
 17 issues, and could not find that, except for very  
 18 isolated circumstances.  
 19 **Q. Did you find any evidence that there was a**  
 20 **sales rep that was exceeding the meal cap so**  
 21 **frequently that they should have been let go?**  
 22 A. Well, I don't know.  
 23 **Q. Okay. And Ms. Groome forwards this e-mail**  
 24 **to her entire team at the top. We can scroll back**  
 25 **up to the top.**

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1 A. Uh-hm.  
 2 **Q. And she states: "I cannot say it better**  
 3 **than Jeremy states below. Please carefully review**  
 4 **Jeremy's e-mail.**  
 5 **If you have -- if you have any questions,**  
 6 **please call me. I am certain this is more of a**  
 7 **reminder as this team is extremely compliant with**  
 8 **all aspects of BC, and we, as a region, operate**  
 9 **daily within BC constraints -- constraints with no**  
 10 **space for wiggle room."**  
 11 **Based on your review of the evidentiary**  
 12 **record in this case, do you agree with Ms. Groome's**  
 13 **statement that her team was extremely compliant with**  
 14 **all aspects of business conduct?**  
 15 A. No.  
 16 **Q. Why do you disagree with Ms. Groome?**  
 17 A. Well, for one thing, Ms. Groome's team, as  
 18 did other teams involved in HBV speaker programs,  
 19 had a continuous pattern of inviting inappropriate  
 20 attendees to the speaker programs. They went beyond  
 21 the meal limits on a pretty -- you know, not an  
 22 irregular basis, but that was not something that  
 23 was -- that I felt was being addressed effectively.  
 24 They also had a problem with speaker programs where  
 25 there were many, many repeat attendees and they

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1 were -- they were not reporting -- as you've pointed  
 2 out yourself, they were not reporting noncompliance  
 3 to the business conduct folks on a regular basis.  
 4 So, no, I don't -- I don't think that her team was  
 5 particularly compliant and I don't think that other  
 6 teams were compliant either.  
 7 **Q. So you -- you believe that Ms. Groome**  
 8 **conveyed inaccurate information to her sales team in**  
 9 **this e-mail on April 30th, 2016, correct?**  
 10 A. Inaccurate?  
 11 **Q. Correct.**  
 12 A. Yeah, I think that's right.  
 13 **Q. And she goes on to say, "We, as a region,**  
 14 **operate daily within BC constraints, with no space**  
 15 **for wiggle room."**  
 16 **Your testimony is that you also don't agree**  
 17 **with that statement, correct?**  
 18 A. No. My testimony would be that I found  
 19 that the operations of sales and marketing with  
 20 respect to its speaker programs did not comply with  
 21 the business conduct from the start and so I -- I  
 22 could not agree with her statement, yeah.  
 23 **Q. And she goes on to say, "Thank you for your**  
 24 **ongoing attention to all aspects of BC, for working**  
 25 **and excelling in your roles by staying in BC, and**

<p style="text-align: right;">Page 65</p> <p>1 for all that you do to drive sales while keeping the  2 company safe."  3 Is this an example of the type of  4 compliance communication between therapeutic  5 specialists and their managers that you talked about  6 on page 69 of your report?  7 A. No.  8 <b>Q. Why not?</b>  9 A. Because I think this is -- you know, I just  10 don't think that this --  11 First of all, I don't believe that it's  12 accurate and I don't believe it recognizes the  13 compliance risks and brings them to the therapeutic  14 specialist's attention in a way that is designed to  15 correct problems, and a compliance program should be  16 proactive, should be moving towards eliminating  17 risk. Identifying, preventing and eliminating  18 risks.  19 <b>Q. Got it. So Ms. Groome forwarding an e-mail</b>  20 <b>from her boss, which indicated that Gilead's</b>  21 <b>business conduct department would be monitoring meal</b>  22 <b>spend on a quarterly basis and enforcing rules</b>  23 <b>relating to meal overages, is not an example of</b>  24 <b>identifying risks for the sales force and</b>  25 <b>establishing communication about how to manage those</b></p>	<p style="text-align: right;">Page 67</p> <p>1 A. Well, it wasn't effective. It didn't work,  2 right?  3 <b>Q. But -- but you're not -- well -- so we'll</b>  4 <b>get to implementation in a moment. I disagree with</b>  5 <b>you, but we can talk about that. But I'm talking</b>  6 <b>about the -- the prong or the opinion that you offer</b>  7 <b>about communications to the sales force. And you</b>  8 <b>say that you found no examples of this type of</b>  9 <b>communication. Why isn't this one of them?</b>  10 A. Well, I -- I just -- I don't think --  11 MR. SHAH: Object to form. Asked and  12 answered.  13 You can answer.  14 THE WITNESS: Yeah. I'd have to go back  15 down and see what -- what was said, but -- but I  16 think the point that I would make is that it may  17 have been a communication and so another example  18 would be training. There was information in the  19 training slides that was facially appropriate, but  20 the bottom line was the compliance program was not  21 effective because its statements, although  22 well-intentioned as they may be, were not followed  23 up on, and the problem that is identified in the  24 e-mail from Mr. Schmalzle continued, so I -- I  25 didn't see it as an effective communication.</p>
<p style="text-align: right;">Page 66</p> <p>1 risks?  2 MR. SHAH: Object to form.  3 THE WITNESS: Well, I don't think that it  4 was -- I don't think it was implemented. I think  5 that, in fact, some witnesses testified that there  6 was a -- a certain ethic of kind of papering over  7 issues or not putting things in writing. I don't  8 think that this e-mail was accurate and -- so I  9 stand by that.  10 BY MR. LUSKEY:  11 <b>Q. You didn't answer the question.</b>  12 <b>I understand you don't think Ms. Groome's</b>  13 <b>e-mail was accurate about her team operating within</b>  14 <b>BC, but my question is different.</b>  15 <b>You say, in your report, that you found no</b>  16 <b>examples of compliance communication between TSs and</b>  17 <b>their managers and, you know, the business conduct</b>  18 <b>department about speaker programs. Why isn't this</b>  19 <b>an example of one of those communications?</b>  20 <b>Mr. Schmalzle's e-mails, business conduct is going</b>  21 <b>to be monitoring meal spend, we're going to be</b>  22 <b>looking at it quarterly. You're going to get</b>  23 <b>coaching if you have even a single overage. And</b>  24 <b>then you've got a regional director sending that out</b>  25 <b>to an entire sales force. What's wrong with that?</b></p>	<p style="text-align: right;">Page 68</p> <p>1 MR. LUSKEY: Understood. Let's look at  2 another one of these --  3 THE WITNESS: May I just --  4 MR. LUSKEY: Yeah?  5 THE WITNESS: Can I have a comfort break?  6 MR. LUSKEY: Oh, of course. Absolutely.  7 Sorry, we've been going an hour and a half.  8 Let's go off the record.  9 THE WITNESS: Okay. I'll be back in two  10 minutes.  11 MR. LUSKEY: No, it's okay. You can take  12 -- you can take -- we can take a 10-minute break.  13 MR. SHAH: Why don't we take a 10-minute --  14 Is that appropriate for you, Randy?  15 MR. LUSKEY: Of course.  16 THE VIDEOGRAPHER: Okay. The time is  17 8:33 -- I'm sorry, 11:33 a.m. We are off the  18 record.  19 (Short recess was taken from 11:33 a.m.  20 until 11:43 a.m.)  21 THE VIDEOGRAPHER: Back on the record. The  22 time is 11:43 a.m.  23 BY MR. LUSKEY:  24 <b>Q. Ms. Evans, you note on page 1 of your</b>  25 <b>report that you were engaged by the Miller Shaw law</b></p>

<p style="text-align: right;">Page 73</p> <p>1 You can answer.</p> <p>2 THE WITNESS: Since -- since May of 2020,</p> <p>3 did they send me e-mails?</p> <p>4 BY MR. LUSKEY:</p> <p>5 <b>Q. Since the beginning of your retention in</b></p> <p>6 <b>this matter, did relators' counsel send you any</b></p> <p>7 <b>e-mails in which they provided you facts or data</b></p> <p>8 <b>that you considered in forming your opinions in this</b></p> <p>9 <b>case?</b></p> <p>10 A. No, Mr. Luskey. The way -- the way that we</p> <p>11 handled the information exchange is that I would be</p> <p>12 given access to a website that was protected and a</p> <p>13 password and -- in order to get into that website, I</p> <p>14 had to use the password, but I -- you know, there</p> <p>15 was not a tranche of materials that were sent to me</p> <p>16 by e-mail. So, occasionally, if I couldn't find</p> <p>17 something, I might say, you know, can you help me</p> <p>18 locate this, do you have the number for it, or</p> <p>19 something like that, but no. So that's how that</p> <p>20 worked.</p> <p>21 <b>Q. So I understand that you had access to that</b></p> <p>22 <b>database, but separate from that data -- database,</b></p> <p>23 <b>your under-oath testimony today is that relators'</b></p> <p>24 <b>counsel never sent you any e-mail where they</b></p> <p>25 <b>provided you any facts or data that you considered</b></p>	<p style="text-align: right;">Page 75</p> <p>1 <b>You are not offering an expert opinion that</b></p> <p>2 <b>any doctor submitted a false claim to Medicare for</b></p> <p>3 <b>Viread or VEMLIDY, correct?</b></p> <p>4 A. That is correct.</p> <p>5 <b>Q. And you are not offering an expert opinion</b></p> <p>6 <b>that Gilead ever caused any doctor to submit a false</b></p> <p>7 <b>claim for reimbursement, correct?</b></p> <p>8 A. That is correct.</p> <p>9 <b>Q. And you are not offering an expert opinion</b></p> <p>10 <b>that any particular Gilead employee knowingly paid</b></p> <p>11 <b>remuneration to a doctor to induce or reward</b></p> <p>12 <b>prescriptions, correct?</b></p> <p>13 A. That is -- that is correct. I'm not -- I'm</p> <p>14 not -- not looking at the facts of the compliance</p> <p>15 programs.</p> <p>16 <b>Q. Well, you're certainly looking at the</b></p> <p>17 <b>facts, right? Part of your --</b></p> <p>18 A. Right.</p> <p>19 <b>Q. -- methodology in this case was to review</b></p> <p>20 <b>the evidence, but my question was: Based on your</b></p> <p>21 <b>review of those facts, you don't plan to offer an</b></p> <p>22 <b>expert opinion in this case that you have concluded</b></p> <p>23 <b>that a Gilead employee knowingly paid remuneration</b></p> <p>24 <b>to a doctor to induce or reward prescriptions,</b></p> <p>25 <b>correct?</b></p>
<p style="text-align: right;">Page 74</p> <p>1 <b>in forming your opinions in this case?</b></p> <p>2 A. Not -- not that I can recall, sir, no.</p> <p>3 <b>Q. Okay.</b></p> <p>4 A. It was all handled through the -- the</p> <p>5 uploads.</p> <p>6 <b>Q. Okay. Okay. We'll talk in a moment about</b></p> <p>7 <b>your ultimate --</b></p> <p>8 A. Oh, I'm sorry. There is one thing. There</p> <p>9 was -- they asked me to look at an -- a opinion that</p> <p>10 I have cited in my report that has to do with -- it</p> <p>11 was a research study that was done, having to do</p> <p>12 with statins and the use of payments to physicians</p> <p>13 and whether or not that increased their likelihood</p> <p>14 to prescribe statins, and I did look for that. I</p> <p>15 couldn't find it, and so that was one document that</p> <p>16 was sent to me by e-mail, but that -- that's all I</p> <p>17 can recall.</p> <p>18 <b>Q. Okay. Thank you.</b></p> <p>19 <b>We'll talk in a moment about your ultimate</b></p> <p>20 <b>conclusions regarding the effectiveness of Gilead's</b></p> <p>21 <b>compliance program, but I first want to make sure</b></p> <p>22 <b>that we are crystal clear regarding some topics</b></p> <p>23 <b>about which you will not be offering an expert</b></p> <p>24 <b>opinion, so please let me know if I have these</b></p> <p>25 <b>correct.</b></p>	<p style="text-align: right;">Page 76</p> <p>1 A. That's correct.</p> <p>2 <b>Q. And you're not offering an expert opinion</b></p> <p>3 <b>that any Gilead employee knowingly conducted sham</b></p> <p>4 <b>speaker programs, right?</b></p> <p>5 A. I have not offered that opinion, no. I'm</p> <p>6 looking at the compliance program.</p> <p>7 <b>Q. Okay. And you're not offering an opinion</b></p> <p>8 <b>that Gilead violated the Anti-Kickback Statute,</b></p> <p>9 <b>correct?</b></p> <p>10 A. That is correct.</p> <p>11 <b>Q. And you're not offering an opinion that</b></p> <p>12 <b>Gilead violated the False Claims Act, correct?</b></p> <p>13 A. That is correct.</p> <p>14 <b>Q. Are you offering an opinion that Gilead</b></p> <p>15 <b>knowingly or willfully violated the law?</b></p> <p>16 A. No, I'm not. I'm -- I would offer the</p> <p>17 opinion that Gilead knowingly failed to comply with</p> <p>18 its own policies and the industry standards and the</p> <p>19 OIG's -- sub OIG's regulatory guidance.</p> <p>20 <b>Q. Understood. So you plan to offer an</b></p> <p>21 <b>opinion at trial in this case that Gilead knowingly</b></p> <p>22 <b>did those things?</b></p> <p>23 A. Based on the actions of its employees --</p> <p>24 MR. SHAH: Object to form.</p> <p>25 You can answer.</p>

<p style="text-align: right;">Page 77</p> <p>1 THE WITNESS: Yes, based on the actions of              2 its employees.              3 BY MR. LUSKEY:              4 <b>Q. You plan to opine on Gilead's state of</b>              5 <b>mind?</b>              6 A. No, the actions of its employees.              7 <b>Q. You just testified that you plan to offer</b>              8 <b>an opinion at trial that Gilead knowingly violated</b>              9 <b>the law, correct?</b>              10 A. No, I did not.              11 <b>Q. You just testified that you plan -- tell --</b>              12 <b>tell me what your testimony was. How did I</b>              13 <b>mischaracterize it?</b>              14 A. I will testify and am testifying that              15 Gilead employees, from management down to the TSs,              16 ignored the prescriptions in the business conduct              17 manuals and that they operated their VEMLIDY and              18 Viread -- Viread and VEMLIDY speaker programs in a              19 way that was not consistent with the PhRMA code or              20 with the OIG's regulatory guidance -- compliance              21 guidance for pharmaceutical manufacturers.              22 <b>Q. Right, but that's not responsive to my</b>              23 <b>question. My question is whether you plan to</b>              24 <b>testify that they did those things knowingly.</b>              25 MR. SHAH: Object to form.</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Or to do something wrong.              2 <b>Q. Right.</b>              3 A. People can be mistaken, you know.              4 <b>Q. Which Gilead employees do you intend to</b>              5 <b>testify acted knowingly in this way?</b>              6 MR. SHAH: Object to form.              7 THE WITNESS: Okay. Well, let's start with              8 Ms. Larson certainly knew the business conduct --              9 what the business conduct manual said and yet, at              10 times, she was involved in conduct that ran contrary              11 to what the clear mandate of the business conduct              12 manual.              13 MR. LUSKEY: Okay.              14 BY MR. LUSKEY:              15 <b>Q. And so you -- and so you intend to offer</b>              16 <b>that testimony Ms. Larson knowingly violated the</b>              17 <b>business conduct manual, correct?</b>              18 A. Yeah. She either ignored it or, you know,              19 knew what it said and did -- did the prohibited              20 behavior anyway.              21 MR. LUSKEY: Okay. Just give me one              22 second. Sorry, there's a doorbell. Let's go off              23 the record.              24 THE WITNESS: Okay.              25 MR. LUSKEY: I'm --</p>
<p style="text-align: right;">Page 78</p> <p>1 THE WITNESS: Through the actions of their              2 employees -- their employees knowingly, yes.              3 BY MR. LUSKEY:              4 <b>Q. And how do you define the term "knowingly"?</b>              5 A. Knowing that the business conduct manual              6 required them to do one thing, for example, report              7 noncompliance and then failing to do that.              8 <b>Q. And what about the term "willfully"? Do</b>              9 <b>you plan to offer testimony that Gilead employees</b>              10 <b>willfully engaged in that misconduct?</b>              11 A. I don't know if they willfully did. I -- I              12 didn't really consider their intent.              13 <b>Q. Well, you -- you just told us that you are</b>              14 <b>planning to testify that they did these things</b>              15 <b>knowingly. Isn't that their intent?</b>              16 A. No. I think knowingly and intentionally              17 are two different things.              18 <b>Q. How are they two different things?</b>              19 A. I just -- you can --              20 You know, you can know that you are              21 violating the business conduct manual, but you may              22 not have intent to do so or to do something wrong.              23 <b>Q. You can know that you are violating the</b>              24 <b>compliance policy, but you may not have the intent</b>              25 <b>to do that?</b></p>	<p style="text-align: right;">Page 80</p> <p>1 MR. SHAH: You need to go off, Randy?              2 MR. LUSKEY: Yep.              3 THE VIDEOGRAPHER: It is 11:59 a.m.              4 We are off the record.              5 (Short recess was taken from 11:59 a.m.              6 until 11:59 a.m.)              7 THE VIDEOGRAPHER: Back on the record.              8 Time is 11:59 a.m.              9 BY MR. LUSKEY:              10 <b>Q. Okay. And, Ms. Evans, so you described why</b>              11 <b>you believe Ms. Larson acted knowingly. I just want</b>              12 <b>a list of the employees, that you intend to offer</b>              13 <b>testimony, acted knowingly to violate Gilead's</b>              14 <b>business conduct manual.</b>              15 MR. SHAH: Object to form.              16 THE WITNESS: Okay. So Ms. Larson would be              17 one of them. I believe that her supervisors, Mr.              18 Schmal- -- Schmalzle, and I'm probably              19 mispronouncing his name, and other individuals who              20 were in the sales department knew, for example, that              21 attendees were supposed to be legitimate attendees,              22 were not supposed to be --              23 BY MR. LUSKEY:              24 <b>Q. Ms. Evans, I -- I just want --</b>              25 A. Yeah, am I --</p>



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1 **Q. Sorry, it's okay. I just -- I just want a**  
 2 **list of the employees that you intend to offer acted**  
 3 **knowingly. We can talk about the reasons for that**  
 4 **in a moment, but can you just provide me a list?**  
 5 A. Okay. All right.  
 6 MR. SHAH: Object to form.  
 7 You can answer.  
 8 THE WITNESS: All right. So, Graham  
 9 Warden, Leilani Larson, Tana -- and I -- forgive me,  
 10 I can't quite recall his name.  
 11 MR. LUSKEY: No problem.  
 12 THE WITNESS: Sarntinoranont -- Sarntin- --  
 13 Tana; Jeremy Schmalzle; Mr. Johnson -- D.J. Johnson;  
 14 Fufu He -- Dr. Fufu He, Dr. Calvin Pan. I know  
 15 these were contractors, but nonetheless, Dr. Calvin  
 16 Pan, Dr. Fufu He, Danny Chu. Ivan Tai. Catherine  
 17 Chan.  
 18 Oh, Mr. Zlatar, Ilija Zlatar, I believe.  
 19 Susan Lin. And then, of course, Ms. Groome --  
 20 Kimberly Groome. And Mr. Purcell. That's all I can  
 21 recall at this point.  
 22 BY MR. LUSKEY:  
 23 **Q. Okay. And just so we're clear, your**  
 24 **testimony is that you plan to offer expert opinions**  
 25 **in this case not just that those employees violated**

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1 **the business conduct manual, but that they did so**  
 2 **knowingly, correct?**  
 3 A. In some cases. I don't know that I  
 4 could -- I'd have to go back and think about  
 5 circumstances with respect to each one of them, but  
 6 yes.  
 7 **Q. Okay. And do you plan to offer an expert**  
 8 **opinion at trial in this case that Gilead used**  
 9 **speaker selection to induce or reward prescriptions?**  
 10 A. Yes.  
 11 **Q. For instance, on page 32 to 33 of your**  
 12 **expert report -- I think you've got that in front of**  
 13 **you, the very last line of page 33, you note: "Like**  
 14 **ad board selection, speaker selection was used as a**  
 15 **way of rewarding physicians for past prescriptions**  
 16 **or inducing them to write future prescriptions of**  
 17 **Viread and VEMLIDY," correct?**  
 18 A. Right.  
 19 **Q. That's an opinion you plan to offer in this**  
 20 **case, right?**  
 21 A. That's my opinion, yes.  
 22 **Q. And "induce" and "reward," the language you**  
 23 **use in that sentence, those are the words used by**  
 24 **the relevant statute in this case, correct?**  
 25 MR. SHAH: Object to form.

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1 THE WITNESS: I don't recall what the  
 2 statute -- I -- you know, I don't recall, really,  
 3 whether it's the statute or whether it's the  
 4 guidance. I can't -- I can't recall.  
 5 BY MR. LUSKEY:  
 6 **Q. Wait. As you sit here today, you don't**  
 7 **recall whether the Anti-Kickback Statute talks about**  
 8 **inducement or reward?**  
 9 A. I think it does, yes.  
 10 MR. SHAH: Object to form.  
 11 THE WITNESS: But I can't recall.  
 12 BY MR. LUSKEY:  
 13 **Q. Okay. And -- and you plan to offer an**  
 14 **expert opinion that Gilead did, in fact, induce and**  
 15 **reward prescriptions, correct?**  
 16 A. Yes, or influence prescriptions, yes.  
 17 **Q. You just said "influence." Your report**  
 18 **says "induce"; is that -- is that correct?**  
 19 A. I guess, yeah.  
 20 **Q. So you plan to --**  
 21 A. I'm sorry, what was the question again?  
 22 I'm -- I'm confused.  
 23 **Q. Oh, my -- my last question was just that**  
 24 **your report says inducing them to write**  
 25 **prescriptions, correct?**

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1 A. Right, uh-hm.  
 2 **Q. So you plan to inform the jury that based**  
 3 **on your review of some of the evidence in this case,**  
 4 **you have concluded, in your expert opinion, that**  
 5 **Gilead did, in fact, use speaker selection to induce**  
 6 **or reward prescriptions, right?**  
 7 A. I -- I'm having a difficult time answering  
 8 this question because really what I was looking at  
 9 was the compliance program. So, if you go back and  
 10 you -- and you say, did the compliance program  
 11 prevent the risk that the following individuals used  
 12 the lure of speaker payments to induce prescription,  
 13 the answer would be no, it did not reduce the risk.  
 14 How do you know that, would be the next question,  
 15 and I would say based on the information and the  
 16 documents and the testimony that I reviewed, the  
 17 following people -- and -- and those are the people  
 18 that I just named for you -- were involved in  
 19 activities that were in contravention of the  
 20 business conduct manual did not deter the -- the  
 21 noncompliant behavior.  
 22 So, I -- I think you have to go back to the  
 23 business conduct manual and the business conduct  
 24 department.  
 25 **Q. That's all well and good, and I understand**



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1 qualified as a compliance expert by a court of law?  
 2 A. No.  
 3 Q. Have you ever testified at trial as a  
 4 compliance expert?  
 5 A. No.  
 6 Q. Have you ever served as a compliance  
 7 officer at a pharmaceutical company?  
 8 A. No.  
 9 Q. Have you ever worked at a pharmaceutical  
 10 company?  
 11 A. No, except I have served as a compliance  
 12 expert for three years for the Bayer domestic --  
 13 domestic board. That was part of my engagement,  
 14 yeah.  
 15 Q. Okay. And in this case, you are charging  
 16 \$400 per hour, correct?  
 17 A. Yes, sir.  
 18 Q. Approximately how much will you bill for  
 19 your work as of today?  
 20 A. I don't know. I have not done the billing.  
 21 Q. Could you ballpark the number for me?  
 22 A. I can't. I'm sorry.  
 23 Q. Okay. Were you compensated for your work  
 24 on the other litigation cases we just discussed?  
 25 A. Yes.

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1 Q. Approximately how much did you make in the  
 2 Novartis case?  
 3 A. Oh, I can't recall. I think it was close  
 4 to \$100,000 in that case.  
 5 Q. What about in Janssen?  
 6 A. I really can't recall on Janssen.  
 7 Q. What about in Teva?  
 8 A. I think Teva was close to -- excuse me, 30,  
 9 35,000, something like that.  
 10 Q. And you don't have any contingency fee in  
 11 these cases, correct?  
 12 A. No, sir.  
 13 Q. How much -- what percentage of your annual  
 14 income comes from your work as a expert in  
 15 litigation matters?  
 16 A. Well, last year, I think I made 14,000 and  
 17 I don't know this year what it will be, but...  
 18 Q. So my question was what -- approximately  
 19 what percentage of your annual income is from your  
 20 work as an expert?  
 21 A. Oh, jeez. I don't know the answer to that.  
 22 I can tell you what I made at Thomson Reuters and we  
 23 can figure it out from there, but...  
 24 Q. Sure.  
 25 A. It's a -- I would say maybe -- last year,

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1 it was 10 percent.  
 2 Q. Understood.  
 3 Okay. I want to talk about the -- the risk  
 4 assessment and internal audit report that you  
 5 mentioned from 2014 that you had not been provided  
 6 in advance of rendering your expert opinions in this  
 7 case on May 3rd and May 26th. You've now had a  
 8 chance to review the 2014 internal audit report,  
 9 correct?  
 10 A. Yes, sir. And -- and I have to -- I want  
 11 to correct the record. I apparently did have access  
 12 to those two -- I guess they -- they look like  
 13 PowerPoints earlier, and I mistakenly said that I  
 14 did not, and I think I was confusing it with the  
 15 NARCR (sic), or whatever those are, the compliance  
 16 committee, right.  
 17 Q. Okay. Oh, so you had access to the 2014  
 18 internal audit report, but you had not reviewed it  
 19 at the time of submitting your expert opinions in  
 20 this case, correct?  
 21 MR. SHAH: Object -- object to form.  
 22 THE WITNESS: I --  
 23 MR. LUSKEY: Sorry?  
 24 THE WITNESS: I'm not -- I'm not sure when  
 25 I saw them -- first saw them, but I did not remark

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1 on them until -- yeah. I -- I'm sorry, I just can't  
 2 recall when I first saw them.  
 3 BY MR. LUSKEY:  
 4 Q. Well, in your expert rebuttal report that  
 5 you filed six days ago, you note that this document  
 6 was "apparently withheld on the basis of privilege,"  
 7 correct?  
 8 A. That's what I understood.  
 9 Q. That was inaccurate, correct?  
 10 A. I think so, yes.  
 11 Q. So you had not reviewed the 2014 internal  
 12 audit report at the time you submitted your rebuttal  
 13 report on May 26th, correct?  
 14 A. I think that's right, yes.  
 15 Q. Okay.  
 16 A. I'm not sure, but -- I just can't recall.  
 17 I've looked at so many documents, so I just can't --  
 18 Q. Well, you --  
 19 A. -- so I just can't recall.  
 20 Q. You think you may have reviewed it, even  
 21 though you stated in your report that it was  
 22 withheld on the basis of privilege?  
 23 A. No. I can't -- I'm -- I'm sorry, I'm  
 24 confused and I'd -- I'd have to go back and see what  
 25 time -- when I first looked at it, when it came into

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1 my cache of documents that were in the website, and  
 2 I just really can't recall that.  
 3 **Q. But your testimony, under oath today, is**  
 4 **that you may have looked at the 2014 internal audit**  
 5 **document prior to submitting your rebuttal report,**  
 6 **even though you stated in that report that it was**  
 7 **withheld on the basis of privilege?**  
 8 A. I don't think I did because I was under the  
 9 assumption that we -- that we didn't have them or we  
 10 had some problem getting them, or whatever.  
 11 **Q. Okay.**  
 12 A. I really can't recall.  
 13 **Q. Okay. Understood.**  
 14 **And so when you wrote in your rebuttal**  
 15 **report that no conclusions could be fairly reached**  
 16 **about these auditing and monitoring activities, at**  
 17 **that time, you had not yet reviewed this document,**  
 18 **correct?**  
 19 A. That's -- I believe that's correct, yes.  
 20 **Q. Okay. And this document -- and the**  
 21 **documents relating to the 2014 internal audit**  
 22 **report, they were cited in Kevin McAnaney's opening**  
 23 **report on May 3rd, correct?**  
 24 A. Right.  
 25 **Q. Did you ask counsel to provide you those**

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1 **materials?**  
 2 A. I think I did. I can't recall. I think I  
 3 went down and tried to find them myself based on  
 4 Kevin's reference using the Bates-number or GP  
 5 number, but it was really hard to find them 'cause  
 6 it wasn't a single -- it's hard to explain, but it  
 7 wasn't a single cache of documents. There were,  
 8 like, tranches that came, so I had to go backwards  
 9 through time and try and find them.  
 10 **Q. Okay. Let's take a look at these documents**  
 11 **and flip through them.**  
 12 MR. LUSKEY: So this will be introduced as  
 13 the next exhibit in order. It's Tab 292. And for  
 14 the record, this exhibit is Bates-Labeled Gilead  
 15 Purcell 340625 through 340637. It is titled  
 16 "Speaker Program Review, Internal Audit Report  
 17 October 2014." We'll pull that up on your screen.  
 18 This will be Exhibit 9.  
 19 (Exhibit 9 was marked for identification.)  
 20 MR. LUSKEY: Spencer, these are taking a  
 21 while to load.  
 22 THE VIDEOGRAPHER: I'm having a computer  
 23 issue again.  
 24 MR. LUSKEY: Let's go off the record. Can  
 25 we go off the record?

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1 THE VIDEOGRAPHER: Time is 2:00 p.m.  
 2 We are off the record.  
 3 (Short recess was taken from 2:00 p.m.  
 4 until 2:01 p.m.)  
 5 THE VIDEOGRAPHER: Okay. We're back on the  
 6 record and the time is 2:01 p.m.  
 7 BY MR. LUSKEY:  
 8 **Q. I -- Ms. Evans, Exhibit 9 is the 2- --**  
 9 **October 2014 audit report that you reviewed sometime**  
 10 **for the first -- or, excuse me, for the first time**  
 11 **sometime in the last six days, correct?**  
 12 MR. SHAH: Object to form.  
 13 THE WITNESS: Yes, it is.  
 14 MR. LUSKEY: What -- what was the -- what's  
 15 the objection? I want to correct that question,  
 16 Jim.  
 17 MR. SHAH: I just was objecting to form. I  
 18 wasn't certain it accurately stated her prior  
 19 testimony, Randy, that's all.  
 20 MR. LUSKEY: Okay. All right. I think we  
 21 have got the answer there. All right.  
 22 BY MR. LUSKEY:  
 23 **Q. So if you flip to page 2 of this document,**  
 24 **you'll see that -- we'll blow up the screen for you**  
 25 **a little bit, the objective of the audit "was to**

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1 **evaluate the controls in place to ensure that**  
 2 **documented processes exist for the selection,**  
 3 **classification, and approval of speakers" and that**  
 4 **processes are in place to ensure proper utilization**  
 5 **and payments in line with established fair market**  
 6 **values.**  
 7 **Correct?**  
 8 A. Yes.  
 9 **Q. Any concerns about the scope of this**  
 10 **internal audit?**  
 11 A. No.  
 12 MR. SHAH: Object to form.  
 13 MR. LUSKEY: All right.  
 14 BY MR. LUSKEY:  
 15 **Q. And the audit was across the entire United**  
 16 **States; is that right?**  
 17 A. I don't know the answer to that. Oh, I  
 18 guess, yes. I see.  
 19 **Q. Okay. No problem.**  
 20 **And the scope of the audit included all**  
 21 **U.S. speaker programs during the period from**  
 22 **July 1st, 2013, through June 30th, 2014, so**  
 23 **basically a full year's worth of speaker programs,**  
 24 **correct?**  
 25 A. Yes, sir.

<p style="text-align: right;">Page 141</p> <p>1 Q. Is that a decent sample size for an  2 internal audit?  3 MR. SHAH: Object to form.  4 THE WITNESS: Would that be a good sample  5 size, is what you're asking?  6 BY MR. LUSKEY:  7 Q. That's right. That's what I meant to ask.  8 A. Certainly.  9 Q. And then, continuing down on that page  10 under "Conclusions," it notes: "Overall, speaker  11 programs are generally conducted within the  12 framework outlined by the BCM."  13 Did I read that correctly?  14 A. Yes.  15 Q. And then, it notes the first issue there,  16 under "Conclusions," that "With regard to the  17 accuracy of the speaker program, payment information  18 provided by a third-party provider, AHM, and  19 reflected in the CompleteSpend system, a number of  20 instances were noted where confirmed and unconfirmed  21 speakers appeared to be paid to speak at the same  22 program." It looks like they identified this is an  23 a system logic area; is that correct?  24 A. Yes.  25 Q. This finding relates to a -- a data</p>	<p style="text-align: right;">Page 143</p> <p>1 care professionals (HCPs) attended multiple events  2 that featured the same educational topic," correct?  3 A. That's right.  4 Q. And it says -- a second. It says there, in  5 that first main paragraph, "While the business  6 conduct manual does not provide guidance related to  7 the frequency of attendance at same topic meetings,  8 a review indicated that 117 HCPs appeared to attend  9 on multiple events that featured the same  10 educational topic," correct?  11 A. Yes.  12 Q. And then continuing on, it notes, in that  13 same paragraph, "Our analysis indicated that the  14 frequency of attendance at the same topic ranged  15 from three to 15 times," correct?  16 A. Yes.  17 Q. That was across all therapeutic areas?  18 A. Apparently so, yes.  19 Q. And it looks like, from that chart, you'll  20 see down below there, that the vast majority of  21 those, 61 percent, were HCPs that had attended three  22 programs on the same topic, correct?  23 A. Yes.  24 Q. And then the recommendation is "We  25 recommend that business conduct develop guidance</p>
<p style="text-align: right;">Page 142</p> <p>1 integrity issue; would you agree?  2 A. Seems to, yes.  3 Q. And that's, you know, one of the things  4 that you like to see in audits, is part of the OIG  5 compliance guidance to look for data integrity  6 issues, correct?  7 A. That would be one thing, yes, sir.  8 Q. And then continuing on, it notes:  9 "Additionally, HCPs were found to attend some topic  10 programs multiple times within a relatively short  11 period of time."  12 So this is a repeat-attendee finding,  13 correct?  14 A. Yes.  15 Q. Your understanding, based on review of this  16 document, is that Gilead conducted an audit of the  17 repeated-attendee issue as early as 2014?  18 A. Yes.  19 Q. And then, finally, another finding there  20 relating to the speaker program nomination process;  21 do you see that?  22 A. Yes.  23 Q. All right. And then if we scroll to page 3  24 of this document, and look at finding two. Here, it  25 notes that there are "Instances noted where health</p>	<p style="text-align: right;">Page 144</p> <p>1 related to appropriate meeting attendee" -- excuse  2 me, "attendance frequency for same topic meetings,"  3 correct?  4 A. That's -- that was the recommendation. If  5 you could go a little bit -- scroll up a little bit  6 so I can see the req.  7 Q. Of course.  8 A. Yeah, there you go. Uh-hm.  9 Q. And then the next column is the "Management  10 Response." Is that typical in a audit document, to  11 have a recommendation and a management response?  12 A. Yes, I've seen those in internal audit  13 documents before.  14 Q. And it states that the business conduct  15 manual is updated each year and that Gilead will  16 continue to monitor this frequency issue during 2015  17 and will make a recommendation on a limit, and then  18 it also indicates that they will do some  19 benchmarking within the industry, correct?  20 A. That's what it says, yes.  21 Q. And before we address whether Gilead  22 actually executed on this, which we'll look at in a  23 minute, would you consider this to be a reasonable  24 remediation plan?  25 A. A reasonable what, sir?</p>

<p style="text-align: right;">Page 145</p> <p>1 <b>Q. Remediation plan.</b>                  2 A. I wouldn't characterize it as effective,                  3 going back to my report. I mean, it had some good                  4 ideas, but, yeah, I mean, I wouldn't -- I wouldn't                  5 characterize it as a remediation plan or effective                  6 correction action -- corrective action plan, no.                  7 <b>Q. What was ineffective about this corrective</b>                  8 <b>action plan from your prospective?</b>                  9 A. Well, for one thing, it -- nothing was done                  10 for at least a year. In 2016, they finally changed                  11 the business conduct manual to address the repeat                  12 attendance issue. Prior to that time, they didn't                  13 do anything, despite the fact that in -- in 2014, it                  14 was pretty obvious that there were -- there was a                  15 big repeated attendance problem.                  16 In fact, when I went back and I looked at                  17 Dr. He's testimony and the number of times in 2014                  18 and 2015 he attended or spoke on the same topic, it                  19 was -- it was really pretty amazing. In 2014, he                  20 went to a conference and he went to three more on                  21 the same topic in January alone. In February, he                  22 went to another one. So, you know, not even a month                  23 later, same -- same program, same doctor, and he                  24 was -- you know, this is when he was -- you know,                  25 this is at a time when Gilead knew that there was a</p>	<p style="text-align: right;">Page 147</p> <p>1 review any documents that suggest that Gilead made                  2 those policy changes relating to repeat attendees in                  3 2015, correct?                  4 A. I didn't see anything that indicated that                  5 they made those changes until 2016.                  6 <b>Q. Great. We'll look at that in a moment.</b>                  7 <b>And so your testimony is that this action</b>                  8 <b>plan that required -- that recommended monitoring,</b>                  9 <b>gathering more data, benchmarking an analysis before</b>                  10 <b>making a policy change, was ineffective, correct?</b>                  11 MR. SHAH: Object to form.                  12 THE WITNESS: I'm sorry?                  13 MR. LUSKEY: Okay. He said object to form.                  14 You can answer.                  15 THE WITNESS: Yes, I think it was                  16 ineffective.                  17 BY MR. LUSKEY:                  18 <b>Q. Okay. And then let's take a look at a few</b>                  19 <b>more documents relating to this audit. We will</b>                  20 <b>introduce as Exhibit 9, Tab 269.</b>                  21 THE STENOGRAPHER: I believe it's                  22 Exhibit 10.                  23 MR. LUSKEY: Sorry about that. Exhibit 10,                  24 thank you.                  25 (Exhibit 10 was marked for identification.)</p>
<p style="text-align: right;">Page 146</p> <p>1 repeat attendance problem. I don't understand why                  2 they didn't just fix it.                  3 <b>Q. And we'll look at the fix in just a moment.</b>                  4 <b>But not only did Gilead know, but they actually</b>                  5 <b>caught that anecdote you just described with Dr. He,</b>                  6 <b>right? He would have been captured in this chart</b>                  7 <b>right here that reflects repeat attendees, correct?</b>                  8 A. Not in 2015.                  9 <b>Q. No, you -- you just gave us an example from</b>                  10 <b>2013 into 2014, I thought you said?</b>                  11 A. No, I didn't. In November of 2014, he went                  12 to a speaker program and then he had three in                  13 January of 2015 alone. And then he started speaking                  14 in March of 2015, so these earlier ones were                  15 attendee issues. He started speaking in March of                  16 2015, and the very first speaker program he hosted                  17 had an open bar.                  18 So I don't consider this to be a                  19 corrective -- an effective corrective action plan at                  20 all. Basically, they're saying is -- what they're                  21 saying is let's put something in the business                  22 conduct manual and that doesn't happen until 2016,                  23 so --                  24 <b>Q. And -- and they note here that they will</b>                  25 <b>consider implementation in Q4 2015. You did not</b></p>	<p style="text-align: right;">Page 148</p> <p>1 BY MR. LUSKEY:                  2 <b>Q. For the record, Exhibit 10 is a PowerPoint</b>                  3 <b>presentation labeled "Speaker Program Working Group,</b>                  4 <b>June 22nd, 2015."</b>                  5 <b>Ms. Evans, do you see that document up on</b>                  6 <b>your screen, Exhibit 10?</b>                  7 A. I do.                  8 <b>Q. This document is not listed on your</b>                  9 <b>materials-considered list. Is this the first time</b>                  10 <b>you've seen it?</b>                  11 A. Hmm. I don't recall.                  12 <b>Q. As you sit here today, you don't recall</b>                  13 <b>reviewing the Speaker Program Working Group</b>                  14 <b>presentation from June 22nd, 2015?</b>                  15 A. I don't recall seeing it. I -- I really --                  16 I think I -- I just can't recall. I'm sorry. I'd                  17 be speculating, so --                  18 <b>Q. If you had reviewed and considered this</b>                  19 <b>document, would you have included it in Appendix B?</b>                  20 A. I don't know. Can we scroll through the                  21 document? And maybe --                  22 <b>Q. Absolutely.</b>                  23 MR. LUSKEY: Yeah, let -- let's go off the                  24 record and let Ms. Evans scroll through it. It's a                  25 long -- a lengthy document.</p>



<p style="text-align: right;">Page 149</p> <p>1 THE VIDEOGRAPHER: Okay. The time is  2 2:13 p.m.  3 We are off the record.  4 (Short recess was taken from 2:13 p.m.  5 until 2:14 p.m.)  6 THE VIDEOGRAPHER: We are back on the  7 record and the time is 2:14 p.m.  8 BY MR. LUSKEY:  9 <b>Q. Ms. Evans, is this your first time seeing</b>  10 <b>this document?</b>  11 A. I can't recall seeing it and it -- running  12 through it, I -- you know, I may have seen it and it  13 just didn't -- you know, I can't recall.  14 MR. LUSKEY: Okay. And on the -- sorry,  15 one -- let me give you some context for this  16 document. I'm going to introduce as Exhibit 11, Tab  17 227.  18 (Exhibit 11 was marked for identification.)  19 BY MR. LUSKEY:  20 <b>Q. This is just a two-page e-mail, so you can</b>  21 <b>flip through it briefly.</b>  22 A. Uh-hm.  23 <b>Q. And for the record, Exhibit 11 is a</b>  24 <b>two-page e-mail Bates-Labeled Gilead Purcell 177920</b>  25 <b>through 921.</b></p>	<p style="text-align: right;">Page 151</p> <p>1 <b>Leadership agreed to form a 'Speaker Program Working</b>  2 <b>Group' (SPWG), consisting of key leads from OLP</b>  3 <b>marketing, OLP operations, and business conduct to</b>  4 <b>assess and make recommendation of -- on six key</b>  5 <b>speaker program process and policy improvements."</b>  6 <b>Were you aware of that effort?</b>  7 A. I have some recollection reading about it,  8 but nothing specific.  9 <b>Q. You don't recall being provided any</b>  10 <b>documents relating to the 2015 Speaker Program</b>  11 <b>Working Group that you considered prior to</b>  12 <b>submitting your expert opinions in this matter?</b>  13 A. No. I didn't say that. I -- I can't  14 recall seeing it. I don't know if it was in the  15 group of documents that I reviewed or not.  16 <b>Q. Okay.</b>  17 A. I -- yeah, I can't recall.  18 <b>Q. Okay. And -- and this mentions the NACRC,</b>  19 <b>that's that main compliance committee we -- you</b>  20 <b>testified about earlier, correct?</b>  21 A. Right.  22 <b>Q. All right. That includes senior</b>  23 <b>leadership; is that fair?</b>  24 A. Yes.  25 <b>Q. It includes the head of the commercial</b></p>
<p style="text-align: right;">Page 150</p> <p>1 <b>Ms. Evans, I -- I don't believe this</b>  2 <b>document is listed on your materials considered. Is</b>  3 <b>this your first time seeing it?</b>  4 A. I think it is, but I'm -- I -- I'm not  5 sure, so...  6 <b>Q. Do you -- do you know who David Ralston is?</b>  7 <b>You will see that the first e-mail in the thread is</b>  8 <b>sent by David Ralston?</b>  9 A. Chief compliance officer?  10 <b>Q. No, good guess. No. No. He's -- I'll</b>  11 <b>represent to you that he was, at this time, the head</b>  12 <b>of Gilead's business conduct group. Does that ring</b>  13 <b>a bell?</b>  14 A. No.  15 MR. SHAH: Object to form.  16 MR. LUSKEY: Object to form? Sorry.  17 BY MR. LUSKEY:  18 <b>Q. Does that sound familiar?</b>  19 A. No, it doesn't, really.  20 <b>Q. Okay. And in this e-mail dated</b>  21 <b>October 13th, 2015, Mr. Ralston writes, "Team, in</b>  22 <b>early spring, business conduct shared an overview of</b>  23 <b>recent speaker program enforcement issues and</b>  24 <b>Gilead's options for risk minimization with the</b>  25 <b>North America Compliance Review Committee (NACRC).</b></p>	<p style="text-align: right;">Page 152</p> <p>1 <b>business units, right?</b>  2 A. Yes.  3 <b>Q. It includes business conduct?</b>  4 A. I guess, yes, uh-hm.  5 <b>Q. You've seen some of those agendas, right?</b>  6 A. Right.  7 <b>Q. Okay. And the e-mail continues, it says:</b>  8 <b>"Below is a summary of these improvements and the</b>  9 <b>finalized outcomes recently approved by the NACRC</b>  10 <b>and the September 11th meeting."</b>  11 <b>The first one of those is a "BPOA process</b>  12 <b>to create uniform needs assessment regarding the</b>  13 <b>number of speaker programs and paid speakers."</b>  14 <b>Were you aware of that process improvement</b>  15 <b>that was put in place in 2015?</b>  16 A. I would not call that a process improvement  17 that was put in place. That may be what it -- it  18 says, but I saw lots of information and then data  19 and documents that -- as I said in my report, that  20 indicate that basically the therapeutic specialists  21 were determining when there was a need in their  22 territory for a speaker program.  23 <b>Q. I understand.</b>  24 A. So I don't think that there was a uniform  25 needs assessment process that was put in place.</p>

<p style="text-align: right;">Page 153</p> <p>1 Q. So it -- I understand your testimony that  2 it wasn't effectively followed. We will talk about  3 that in a moment, but my question was: This e-mail,  4 sent on October 2015 by the head of the business  5 conduct unit, describes process improvements that  6 were approved by the NACRC.  7 Were you aware of this first such process  8 improvement?  9 A. And, again, I'm not sure that I would call  10 it a process improvement because I did not see that  11 this -- I did not see evidence in all the documents  12 and information that I looked at suggested that this  13 actually took place.  14 Q. Okay. I -- I -- I'm just using the term in  15 the e-mail, "process improvement." I understand  16 your testimony you don't believe it was effectively  17 enforced. My question was: Were you aware that the  18 NACRC approved this policy change?  19 A. No. I received -- I didn't have any  20 minutes from the NACRC, so I don't know what they  21 did.  22 Q. And -- well -- well, you certainly know now  23 'cause you've got this e-mail here that says the  24 NACRC approved it, right?  25 A. That's what it says, yes.</p>	<p style="text-align: right;">Page 155</p> <p>1 the sales force, other than this e-mail. I do know  2 that the repeat attendance issue continued well into  3 2016, '17; it was a continuing problem.  4 Q. I understand, and -- and we will talk about  5 that and we'll get there in a moment.  6 My question to you is: A moment ago, you  7 testified nothing was done about repeat attendees in  8 2015. Does this -- seeing this e-mail change your  9 opinion?  10 A. No, it does not.  11 Q. Okay. So you still believe that nothing  12 was done with respect to the repeat attendee issue  13 that was analyzed in the 2014 audit, even after  14 seeing this October 2015 e-mail?  15 A. Yes, and I can explain why.  16 Q. Sure.  17 A. My review of the documents indicated that  18 throughout 2015 and 2016, not only Dr. Hee, but  19 other documents. Dr. Lee was one of them, had  20 repeat attendance at many, many, many of their  21 speaker programs, and the same names kept cropping  22 up. So, I would start to look for, for example, Ray  23 Chan and Lily Chan, they -- they went to at least  24 three speaker programs in 2015, again in 2016, and  25 then there was another doctor whose name came up</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. Okay. And also the next process  2 improvement that's described is a standardized  3 Gilead speaker nomination process across TAs,  4 including all brands moving to an online process  5 with universal speaker portal.  6 Were you aware of that policy change that  7 was implemented in 2015?  8 A. I remember that there was a discussion  9 about a universal speaker portal. That's all I can  10 remember about that.  11 Q. Okay. You were not aware of a -- this  12 policy recommendation coming from the Speaker  13 Program Working Group that was assembled in 2015?  14 A. No. No, I was not.  15 Q. Okay. And then if you flip to the next  16 page, under No. 2, "Policy Improvements." The first  17 one here is a "Yearly attendance cap for attending  18 the same speaker program topic." "Implementation of  19 a cap of three programs on the same topic per  20 calendar year" and "Ongoing monitoring will advise  21 tracking to caps."  22 Were you aware of that policy improvement  23 being a -- improved and communicated to the sales  24 force in October 2015?  25 A. I do not know that it was communicated to</p>	<p style="text-align: right;">Page 156</p> <p>1 frequently and that was -- I believe it was Matthew  2 Mo and his wife, I think her name was Christine Mo,  3 and they -- they were repeat attendees after the  4 2014 audit and after 2015 at programs that were put  5 on by the sales representative Susan Lin. So, yeah,  6 I started to look for this 'cause I was hoping,  7 frankly, to see some real corrective action and --  8 and it just didn't seem like what Gilead was doing  9 was having any effect.  10 Q. How does citing those two anecdotal  11 examples prove that what Gilead was doing had no  12 effect?  13 A. Because it was not just those two anecdotal  14 exam- -- examples, Mr. Luskey. There were lots and  15 lots and lots of examples throughout the documents,  16 and I frankly don't think that these policies that  17 were implemented -- excuse me, the policies that  18 were put into place on paper were implemented,  19 certainly not in 2015, and -- and moving into 2016,  20 2017, they were still having problems with repeat  21 attendance.  22 Q. Still having problems doesn't indicate that  23 there wasn't a policy change, right? The standard  24 for --  25 A. Well --</p>



<p style="text-align: right;">Page 157</p> <p>1 <b>Q. -- an effective compliance program is not</b>  2 <b>perfection, is it?</b>  3 A. No, and -- and, in fact, it is not  4 perfection, but what a compliance program that is  5 effective should be doing is taking the information  6 and data that it has and using that data to  7 continuously improve so that issues that create risk  8 are then ameliorated by things like, hey, talking to  9 the speaker hosts themselves. You know, you've got  10 situations where these same physicians are coming to  11 the same meetings where this physician has a myriad  12 of people coming to his speaker programs that he  13 doesn't even know if they work for him or who they  14 are or -- you know, it -- it -- there just didn't  15 seem to be any communication on the ground, here's  16 the policy, abide by the policy. It doesn't take a  17 year to write this.  18 <b>Q. You testified --</b>  19 A. 2014 to 2016. It didn't take a year to  20 write a policy that said you could only attend three  21 times. I mean, it just -- it really made it look as  22 if business compliance didn't really want to  23 enforce -- rigorously enforce the policies that they  24 were putting into place.  25 <b>Q. You testified earlier that there were no</b></p>	<p style="text-align: right;">Page 159</p> <p>1 <b>mention the yearly attendance cap for attending the</b>  2 <b>same speaker program topic, correct?</b>  3 A. Yes.  4 <b>Q. Okay. So the audit identified this as an</b>  5 <b>issue in October 2014, and then in June 2015, they</b>  6 <b>began to -- there's a discussion of policy</b>  7 <b>improvements to fix that compliance gap, correct?</b>  8 A. I guess there was a discussion at the  9 working group.  10 <b>Q. Okay.</b>  11 A. I don't know. I don't have minutes from  12 the working group, so it's hard for me to say.  13 <b>Q. And then on Slide 14, there's a list of</b>  14 <b>policy rec- -- or a list of recommendations here,</b>  15 <b>including implementing an initial cap of four</b>  16 <b>programs on the same topic per calendar year.</b>  17 <b>Ongoing monitoring, including a "clear plan</b>  18 <b>for accurate by BC needed, preemptive versus</b>  19 <b>post-hoc approach being considered."</b>  20 <b>Do you see that?</b>  21 A. Yes, I don't know what that means. "Clear  22 plan for accurate by BC," hmm, okay. Don't know. I  23 see that, yes.  24 <b>Q. You see it, okay. And then Slide 15</b>  25 <b>discusses the rational for these policy changes. It</b></p>
<p style="text-align: right;">Page 158</p> <p>1 <b>policy improvements with respect to repeat attendees</b>  2 <b>in 2015. That is incorrect, right?</b>  3 MR. SHAH: Object to form.  4 You can answer, Virginia.  5 THE WITNESS: I would rely on my report and  6 I would -- I would state that I do not think that  7 there were -- that with respect to repeat attendees,  8 this policy change that you're talking about in a  9 memo that did not become part of the business  10 conduct manual in 2015, had much, if any, effect.  11 It was not effective.  12 BY MR. LUSKEY:  13 <b>Q. You said you would rely on your report, but</b>  14 <b>you wrote your report before you saw this document,</b>  15 <b>right?</b>  16 A. Well, my report -- this document has not  17 changed my mind, sir.  18 <b>Q. Understood. All right. And so continuing</b>  19 <b>on, let's take a look at what the Speaker Program</b>  20 <b>Working Group actually did. And I know you haven't</b>  21 <b>seen this document until today, but we're going to</b>  22 <b>flip through it. This is exhibit -- we're going to</b>  23 <b>go back to Exhibit 10.</b>  24 <b>If we flip to Slide 13 to start, this is</b>  25 <b>where they begin to discuss policy improvements and</b></p>	<p style="text-align: right;">Page 160</p> <p>1 <b>talks about "Observational data suggests that</b>  2 <b>without speaker program cap, Gilead norms are well</b>  3 <b>within control."</b>  4 <b>Do you see that?</b>  5 A. Yes. I'm not sure what that refers to.  6 <b>Q. Okay.</b>  7 A. Does that refer to the number of times a  8 speaker can attend, the number of times anyone can  9 attend, or speaker program caps on payment? I don't  10 know.  11 <b>Q. Understood.</b>  12 <b>And you'll -- you'll recall that in the</b>  13 <b>audit, across all programs, there were 117 attendees</b>  14 <b>who had -- who had attended three programs on the</b>  15 <b>same topic, correct?</b>  16 A. In a year, yes.  17 <b>Q. In a year, right. And only 46 were at or</b>  18 <b>over four programs on the same topic across the</b>  19 <b>company, correct?</b>  20 A. Right.  21 <b>Q. Okay. And let's see here. And then it</b>  22 <b>also notes that they considered some benchmarking</b>  23 <b>data; do you see that?</b>  24 A. Yes.  25 <b>Q. The final bullet point. And they noted</b></p>

<p style="text-align: right;">Page 161</p> <p>1 that only 36 percent of companies, at this time,                  2 were limiting repeat attendance, correct?                  3 A. Right. I see that's what they say.                  4 Q. Okay. And then Slide 16 through 17 is the                  5 rational -- oh, excuse me, Slide 16 through 17 is a                  6 discussion of a policy improvement regarding                  7 guidelines for how different a speaker program must                  8 be to be considered a different speaker program,                  9 right?                  10 A. I guess that's what it says. I have no                  11 idea what they're talking about there, really.                  12 Q. Okay. One second. All right. We can --                  13 we can put that down.                  14 And then you mentioned that in 2016, Gilead                  15 actually amended the business conduct manual to                  16 implement this policy change around repeat                  17 attendees, correct?                  18 A. I believe that's correct, yes.                  19 Q. So, there was an audit in 2014, then in                  20 June of 2015, there's a Speaker Program Working                  21 Group, then October 13th, 2015, David Ralston, the                  22 head of business conduct, sends out the e-mail                  23 listing the process improvements and the policy                  24 changes, and then in 2016, the business conduct                  25 manual was revised; is that correct?</p>	<p style="text-align: right;">Page 163</p> <p>1 A. No.                  2 Q. Okay.                  3 A. I do not.                  4 Q. All right. He was the head of Gilead's                  5 U.S. commercial team at this time, I'll represent to                  6 you. And he mentions the new rules from the                  7 beginning of 2016.                  8 You see that there?                  9 A. I --                  10 Q. And then -- and then he says, "Now that we                  11 have a full year of experience and data related to                  12 how those rules have been applied, we are making                  13 some refinements to those rules going forward,"                  14 correct?                  15 A. That's what it says, yes.                  16 Q. Fair to say, Gilead continued to analyze                  17 the risks and data associated with repeat attendees,                  18 even after rolling out new policies in 2016?                  19 A. Well, yes, and the reason they did that is                  20 because the repeat attendee problem continued.                  21 Q. Absolutely, and they continued to monitor                  22 it and then implement new policy changes, correct?                  23 A. Well, the policies that they implemented in                  24 2016 and -- and -- were not doing anything, were not                  25 being effective, so I guess they came up with a new</p>
<p style="text-align: right;">Page 162</p> <p>1 A. That's my understanding, yes.                  2 Q. Okay. But your testimony today, as                  3 consistent -- strike that.                  4 But you still believe, as reflected in your                  5 expert report, that Gilead conducted no meaningful                  6 risk assessment activities that drove policy                  7 development, correct?                  8 A. That's correct.                  9 MR. LUSKEY: Okay. And then one more                  10 document to review. This is -- this will be                  11 Exhibit 12, which is Tab 218.                  12 (Exhibit 12 was marked for identification.)                  13 BY MR. LUSKEY:                  14 Q. For the record, Exhibit 12 is Gilead                  15 Purcell 116569 through 6570.                  16 Ms. Evans, you can flip through this one.                  17 It's just a -- basically a one-pager.                  18 Have you seen this one before?                  19 A. I have. Uh-hm.                  20 Q. All right. And so this is an e-mail from                  21 Jim Meyers in 2017, which was about a year and a                  22 half after those initial repeat attendee rules                  23 were -- were rolled out, right?                  24 A. Right. Uh-hm.                  25 Q. Do you know who Jim Meyers is?</p>	<p style="text-align: right;">Page 164</p> <p>1 idea, but my contention, as is -- I've stated in my                  2 report, is that the reason that the policies weren't                  3 affected is because they weren't being enforced.                  4 Q. You -- you -- you continue to say that the                  5 policies weren't doing anything, but you haven't --                  6 you haven't reviewed any of the data showing                  7 improvements in the repeat attendee issue, have you?                  8 A. I have -- I tried to find improvements in                  9 areas throughout my review of the compliance                  10 program. I did not see improvements with respect to                  11 repeated attendees. For example, Dr. Danny Chu had,                  12 I think, 79 speaking speaker programs during the                  13 review period and he had the same person go to 29 of                  14 them. So I just -- I have a difficult time                  15 understanding how you can think that repeated --                  16 repeated attendee problem was fixed in 2016 or 2017.                  17 Q. I don't know how -- how the Danny Chu                  18 anecdote that you just shared really gets at the                  19 question I asked. That's 29 programs from 2013 to                  20 2019 that you just referenced?                  21 A. 79 and he had the same person going to at                  22 least 29 of them.                  23 Q. Over the six-year period?                  24 A. Yeah.                  25 Q. Was that person a -- did he go to more than</p>

<p style="text-align: right;">Page 165</p> <p>1 three programs in 2016?</p> <p>2 A. I believe he did, yes.</p> <p>3 <b>Q. You -- you can testify to that, under oath,</b></p> <p>4 <b>you know that for sure?</b></p> <p>5 A. I'd have to go back and look at it, but</p> <p>6 I -- I believe that he did.</p> <p>7 <b>Q. What about 2017?</b></p> <p>8 A. I don't know about 2017.</p> <p>9 <b>Q. Okay. But this is your example for how the</b></p> <p>10 <b>new rules in 2016 were not doing anything; is that</b></p> <p>11 <b>correct?</b></p> <p>12 A. 2015 and 2016.</p> <p>13 MR. SHAH: Object to form.</p> <p>14 MR. LUSKEY: Okay.</p> <p>15 BY MR. LUSKEY:</p> <p>16 <b>Q. But this is the type of activity you want</b></p> <p>17 <b>to see from an effective compliance program, right,</b></p> <p>18 <b>monitoring the data and making new policy</b></p> <p>19 <b>announcements; isn't that fair?</b></p> <p>20 MR. SHAH: Object to form.</p> <p>21 THE WITNESS: And -- yes, sir, and I would</p> <p>22 like to see that this is being rolled out to the</p> <p>23 therapeutic specialists, who would then be educated</p> <p>24 on the reason behind this particular rule, and then</p> <p>25 after they've been educated, you would want to go</p>	<p style="text-align: right;">Page 167</p> <p>1 rules because the topics would have changed. As</p> <p>2 opposed to having one speaker program, they would</p> <p>3 have several speaker programs and therefore, they</p> <p>4 could justify it as -- as being a different program.</p> <p>5 <b>Q. Got it.</b></p> <p>6 A. To me, that is -- that is not consistent</p> <p>7 with the -- you know, what the business conduct</p> <p>8 manual suggested back in -- or stated back in 2016.</p> <p>9 It shows kind of a desire to go beyond the letter of</p> <p>10 the law -- or the letter of the compliance manual</p> <p>11 and not really take it seriously. So --</p> <p>12 <b>Q. Got it. And I assume -- I assume you</b></p> <p>13 <b>didn't just take that testimony at face value,</b></p> <p>14 <b>right? You went and looked at the actual program</b></p> <p>15 <b>topics to see if there really was an expansion of</b></p> <p>16 <b>the number of topics, correct?</b></p> <p>17 A. I -- I did some review of it, but I didn't</p> <p>18 go back and -- and -- I noted it in passing. I did</p> <p>19 not go back and do a full review.</p> <p>20 <b>Q. Did you make a finding, based your review</b></p> <p>21 <b>of the record, that the number of speaker program</b></p> <p>22 <b>topics increased after this repeat attendee rule was</b></p> <p>23 <b>rolled out?</b></p> <p>24 A. I did not.</p> <p>25 <b>Q. Okay. And then if you scroll to the bottom</b></p>
<p style="text-align: right;">Page 166</p> <p>1 back and see that the rule is being fairly</p> <p>2 implemented and that, you know, from that date</p> <p>3 forward, from the day that you explained the reason</p> <p>4 for the repeat attendee rule, that particular</p> <p>5 therapeutic specialist made sure that it is speaker</p> <p>6 programs, the ones that he was hosting, there</p> <p>7 weren't repeat attendees.</p> <p>8 MR. LUSKEY: Uh-hm.</p> <p>9 THE WITNESS: And I didn't see that</p> <p>10 happening.</p> <p>11 BY MR. LUSKEY:</p> <p>12 <b>Q. And it's clear that, in 2017, Gilead --</b></p> <p>13 <b>Gilead made the repeat attendee rules even tighter,</b></p> <p>14 <b>correct?</b></p> <p>15 A. On paper, it made the repeat attendee rules</p> <p>16 tighter.</p> <p>17 <b>Q. Do you have any evidence to suggest that</b></p> <p>18 <b>Gilead did not actually roll these rules out,</b></p> <p>19 <b>communicate them to the sales force?</b></p> <p>20 A. I actually -- I read an interesting -- an</p> <p>21 interesting part of Mr. Purcell's dep- -- deposition</p> <p>22 where he stated that Ms. Larson changed the rules so</p> <p>23 that a single speaker topic could be broken up into</p> <p>24 several speaker topics and there -- thereby they</p> <p>25 could get around the rules of the repeat attendee</p>	<p style="text-align: right;">Page 168</p> <p>1 <b>of Mr. Meyer's e-mail, you'll see he writes, after</b></p> <p>2 <b>the chart there, "Robert Collett, in OLP operations,</b></p> <p>3 <b>recently sent an e-mail detailing how you can check</b></p> <p>4 <b>HCP attendance -- attendance in Centris."</b></p> <p>5 <b>Do you know what Centris is?</b></p> <p>6 A. I believe I do. I think it's a -- it is an</p> <p>7 automated attendance tracking system. I don't know</p> <p>8 if it was part of the AHM, but it was some automated</p> <p>9 data control, as I understand it.</p> <p>10 <b>Q. That's right. And so were you aware that</b></p> <p>11 <b>the company implemented an electronic system that</b></p> <p>12 <b>automatically tracked and controlled the ability of</b></p> <p>13 <b>a TS to invite an attendee who had already hit their</b></p> <p>14 <b>cap?</b></p> <p>15 A. Was I aware that they had that sort of</p> <p>16 system, yes, but I had a -- I was curious as to how</p> <p>17 they categorized the attendees who were</p> <p>18 nonreportable or who reported their credentials as</p> <p>19 "other" or were not what I would consider and what</p> <p>20 the business conduct would -- conduct manual would</p> <p>21 consider to be appropriate attendees. I don't know</p> <p>22 how they were counted, whether they were counted in</p> <p>23 Centris or --</p> <p>24 <b>Q. Of course.</b></p> <p>25 A. -- you know, they allowed the secretaries</p>

<p style="text-align: right;">Page 169</p> <p>1 to go to more than three dinners. I have no idea.</p> <p>2 <b>Q. Well -- well, did you satisfy your</b></p> <p>3 <b>curiosity by taking a look at the Centris records?</b></p> <p>4 A. If I had access to the Centris -- Centris</p> <p>5 records, I didn't -- I didn't call them by Centris.</p> <p>6 I don't know if I had access to them.</p> <p>7 <b>Q. And the issue --</b></p> <p>8 A. But, no, I didn't go back and do that</p> <p>9 additional checking, no.</p> <p>10 <b>Q. The issue you just raised about nurses or</b></p> <p>11 <b>office clerks, that has nothing to do with the</b></p> <p>12 <b>repeat attendee issue. Centris just determined if a</b></p> <p>13 <b>specific person, by their name, had hit the cap,</b></p> <p>14 <b>correct?</b></p> <p>15 A. Well, it says "HCP attendance" in this</p> <p>16 document that you showed me.</p> <p>17 <b>Q. Uh-hm.</b></p> <p>18 A. So I presume they're talking about doctors,</p> <p>19 prescribers, health care professionals. I don't</p> <p>20 know if it's everybody who went to the -- the</p> <p>21 dinner.</p> <p>22 <b>Q. Do you have any reason --</b></p> <p>23 A. Medical students, the billing people.</p> <p>24 <b>Q. Do you have any reason to believe, as you</b></p> <p>25 <b>sit here today, that Gilead's automatic tracking</b></p>	<p style="text-align: right;">Page 171</p> <p>1 MR. LUSKEY: No problem.</p> <p>2 (Exhibit 13 was marked for identification.)</p> <p>3 BY MR. LUSKEY:</p> <p>4 <b>Q. Have you seen Exhibit 13 before?</b></p> <p>5 A. I think I have seen this one before.</p> <p>6 <b>Q. For the record, it's Gilead Purcell 275599</b></p> <p>7 <b>through 5646.</b></p> <p>8 <b>I don't believe this is on your materials</b></p> <p>9 <b>considered, but you believe you -- you did review</b></p> <p>10 <b>it?</b></p> <p>11 A. I -- I think I've seen something like this</p> <p>12 and that's how I learned about Centris, but I'm not</p> <p>13 sure.</p> <p>14 <b>Q. Okay. And on Slide 2 of this document, it</b></p> <p>15 <b>explains that Gilead was migrating from G-Event to</b></p> <p>16 <b>Centris, right?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And then on Slide 3, it talks about some of</b></p> <p>19 <b>the benefits of Centris, including improved data</b></p> <p>20 <b>reporting, right?</b></p> <p>21 A. Right.</p> <p>22 <b>Q. All right. And then on Slide 4, it talks</b></p> <p>23 <b>about what's different, and it talks about, on the</b></p> <p>24 <b>fourth bullet point -- or excuse me, it talks about,</b></p> <p>25 <b>in the fifth bullet point, the ability to check HCP</b></p>
<p style="text-align: right;">Page 170</p> <p>1 <b>system in Centris, to monitor for repeat attendees,</b></p> <p>2 <b>did not track office managers, receptionists, and</b></p> <p>3 <b>other attendees?</b></p> <p>4 A. I don't know that, so I -- so I really</p> <p>5 don't know.</p> <p>6 <b>Q. Okay. Okay.</b></p> <p>7 A. I mean, I just -- I couldn't speculate</p> <p>8 about it.</p> <p>9 <b>Q. All right. And you're aware that there was</b></p> <p>10 <b>a hard stop in the system when you hit your</b></p> <p>11 <b>attendance limit, correct?</b></p> <p>12 A. Yes, but when was the information entered</p> <p>13 into Centris? I'm not sure. Was that before or</p> <p>14 after the event?</p> <p>15 <b>Q. So, I get to ask the questions today.</b></p> <p>16 A. Oh, sorry.</p> <p>17 <b>Q. As much as I would love to answer them.</b></p> <p>18 A. Sorry.</p> <p>19 <b>Q. But I -- I appreciate the point of</b></p> <p>20 <b>clarification. Let's take a look at one of these</b></p> <p>21 <b>sent rise documents real quick.</b></p> <p>22 MR. LUSKEY: So this will be Exhibit 13.</p> <p>23 This is Tab 252.</p> <p>24 THE STENOGRAPHER: And I'm going to ask you</p> <p>25 to slow down, please.</p>	<p style="text-align: right;">Page 172</p> <p>1 <b>program attendance limits, right?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. Are technology system improvements like</b></p> <p>4 <b>this one typically a good idea, from your</b></p> <p>5 <b>perspective, in terms of improvements to a</b></p> <p>6 <b>compliance program?</b></p> <p>7 A. I think that -- yes, I think that</p> <p>8 electronic recordkeeping can be very helpful, yes.</p> <p>9 <b>Q. And sometimes they can require a</b></p> <p>10 <b>significant financial investment from the company,</b></p> <p>11 <b>right?</b></p> <p>12 A. Yes, uh-hm.</p> <p>13 <b>Q. But it can lead to enhanced controls, fair?</b></p> <p>14 A. Sometimes.</p> <p>15 <b>Q. Yeah. And then if you scroll to page --</b></p> <p>16 <b>Slide 17, it talks about the HCP attendance cap</b></p> <p>17 <b>limits under business rules. And it says the</b></p> <p>18 <b>business conduct manual limits HCP attendance to</b></p> <p>19 <b>three meetings on the same topic per calendar year.</b></p> <p>20 <b>It is not permissible to knowingly invite HCPs to</b></p> <p>21 <b>your programs when they have exceeded that limit.</b></p> <p>22 <b>New functionality in Centris reps can confirm</b></p> <p>23 <b>whether invitees exceeded the cap for the topic</b></p> <p>24 <b>being presented, correct?</b></p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 173</p> <p>1 Q. And then on Slide 18, it's a little hard to  2 read, but it's sort of a screenshot of this Centris  3 system, and in the screenshot, it shows something  4 called Centris Mobile that has an error message  5 that --  6 A. Right.  7 Q. -- says, "Error while validating rule. Max  8 pre-participant. Cap validation failed. Count  9 limit for participation exceeded."  10 So it looks like it essentially alerts a TS  11 and blocks a TS from submitting a program with an  12 invite to you if it has already exceeded the cap; is  13 that fair?  14 A. That's what it looks like, yes.  15 Q. Okay. Now, I understand your opinion that  16 some of these policy changes were not effectively  17 enforced and we will come to that. But with respect  18 to your opinion that Gilead did no meaningful risk  19 assessment or monitoring that drove policy changes,  20 how do you reconcile that opinion with the documents  21 we've looked at, at least with respect to the repeat  22 attendee issue?  23 A. Again, if you look at the compliance  24 program as a whole and you look at what they did  25 with respect to repeat attendance and the -- the</p>	<p style="text-align: right;">Page 175</p> <p>1 can take that document down.  2 You opine, in your expert report, that  3 Gilead's compliance program around speaker programs  4 and advisory boards was ineffective for a number of  5 reasons. And you start by listing some of the  6 government guidance in this area that sort of frames  7 your opinions. I want to walk through some of that  8 guidance.  9 So you first -- and we can flip to this  10 section of your report, just so we're all on the  11 same page. This is in your "Criteria For Analysis"  12 section that starts on page 5.  13 So you first use the -- or you first cite  14 to the U.S. Sentencing Commission's sentencing  15 guidelines for organizations, correct?  16 A. That's correct.  17 MR. LUSKEY: I'll introduce that as  18 Exhibit 14, that's Tab 6.  19 (Exhibit 14 was marked for identification.)  20 BY MR. LUSKEY:  21 Q. And you won't need to flip through these  22 yet. I'm going to go through and introduce them all  23 and then you can refer back to them as needed.  24 Does that sound okay, Ms. Evans?  25 A. Uh-hm. Okay.</p>
<p style="text-align: right;">Page 174</p> <p>1 risk that they were able to identify in 2014, it --  2 it was apparent to me, looking at all of the  3 information and documents that I've referenced in my  4 report, that for the period 2015, 2016, even into  5 2017, they were still having -- Gilead was still  6 having problems with repeat attendees at its speaker  7 programs and it -- it seemed to be the same -- among  8 other things, there were round robins going on, so  9 one physician would speak and -- and another  10 physician, maybe in his practice, would be an  11 attendee and then a month later, you'd see that  12 flip, and that -- that actually did not stop. So,  13 whatever they did with respect to these policies  14 were not implement -- implemented and I found the  15 compliance program, therefore, to be ineffective.  16 Q. And so it's still your expert opinion, to a  17 reasonable degree of certainty, as you sit here  18 today, now that you've had a chance to review the  19 2014 audit report and the 2015 Speaker Program  20 Working Group and the David Ralston e-mail from  21 October 2015, it's still your opinion that Gilead  22 "engaged in virtually no meaningful risk assessment  23 activities," correct?  24 A. That's correct.  25 Q. Okay. Thank you. Let's continue on. We</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. All right. And these guidelines apply to  2 sentencing of organizational defendants in federal  3 criminal cases, correct?  4 A. That's correct.  5 Q. The DOJ -- and in this case, the DOJ  6 reviewed and investigated the relator's allegations  7 about Gilead's speaker program and advisory boards,  8 correct?  9 THE STENOGRAPHER: I need you to slow down,  10 please. I need you to repeat that and I need you  11 to --  12 MR. SHAH: Object to form.  13 THE STENOGRAPHER: Wait, wait, wait. Wait,  14 wait. I need you to slow down and I need you to  15 repeat that question.  16 MR. LUSKEY: Ab- -- ab- -- absolutely.  17 Everyone ready?  18 BY MR. LUSKEY:  19 Q. In this case, the DOJ reviewed and  20 investigated the relator's allegations about  21 Gilead's speaker programs and advisory boards,  22 correct?  23 MR. SHAH: Object to form.  24 You can answer.  25 THE WITNESS: I don't know the answer to</p>

<p style="text-align: right;">Page 189</p> <p>1 A. -- but, yeah, I mean, I thought that was  2 a -- they basically said there were other ways to  3 get this information and -- and, you know, although  4 we agree that peer-to-peer education may be  5 worthwhile, there are other ways to do this which  6 wouldn't raise compliance risk.  7 Q. Yep, yep. I was surprised by that, too,  8 but we'll come back to that.  9 All right. So, I want you to have in front  10 of you, and I know this is hard to do on Zoom, but  11 we've got the -- one, two, three, four -- five  12 guidance documents that -- that we just walked  13 through.  14 A. Right.  15 Q. The Exhibit 14 is the sentence commission,  16 Exhibit 15 is the DOJ guidance, Exhibit 6 -- excuse  17 me, 16 was the 2003 OIG guidance, and then 17 and 18  18 are the two versions of the PhRMA code. So I've got  19 some questions I want to ask you about all of that  20 guidance as a whole.  21 A. Okay.  22 Q. Let me start with this, on page 11 of your  23 report, you opine -- and let me refer you to this  24 specifically. This is the third bullet point.  25 A. Uh-hm.</p>	<p style="text-align: right;">Page 191</p> <p>1 oblige me, I would ask you to just answer that  2 question about whether it's reflected in these  3 particular documents, and then later, we will talk  4 about your broader opinions about why these raise  5 anti-kickback risks. Is that fair?  6 A. That's fair.  7 Q. Okay. All right. So the next question I  8 have is on page 12 of your report, you opine that  9 "Gilead's compliance program did not prevent the  10 speaker programs from being social events because  11 the presentation of educational content was merely a  12 fraction of the whole promotional event."  13 Can you point me to any specific language  14 in Exhibits 14 through 18 that requires the  15 presentation at a speaker program to be a certain  16 percentage of the overall duration of the event?  17 A. No.  18 Q. All right. And then on page 19 of your  19 report, you opine --  20 MR. SHAH: Page 19?  21 MR. LUSKEY: Yeah, sorry, page 19. Yeah.  22 MR. SHAH: Thanks.  23 MR. LUSKEY: No problem.  24 BY MR. LUSKEY:  25 Q. You opine on page 19 that Gilead should not</p>
<p style="text-align: right;">Page 190</p> <p>1 Q. You opine that Gilead's compliance program  2 did not prevent repeat attendance at speaker  3 programs and ad boards.  4 Can you point me to any specific language  5 in Exhibits 14 through 18 that forbids repeat  6 attendance at speaker programs or ad boards?  7 A. No, I cannot, but I -- I would have to say  8 that repeat attendees is something that is -- can be  9 evidence of compliance risk. The reason being, that  10 if these are sham speaker programs or if you've got  11 people who are getting together to -- at the sales  12 representative's request to have a nice dinner and,  13 you know, thereby influencing both attendees and the  14 speaker to use the -- the product that the sales  15 representative is promoting, then I think that  16 repeat attendance does raise a red flag.  17 Q. And -- and Ms. Evans, I fully appreciate  18 your opinion on and why it raises a compliance risk  19 and why it raises an AKS risk. And I promise, I'm  20 going to do my -- I'm running out of time, but I'm  21 going to do my best to get to each of those modules  22 in your report. Right now, I just have a series of  23 questions about whether Exhibits 14 through 18  24 specifically comment on any of these particular  25 issues I want to ask about, and so if you would</p>	<p style="text-align: right;">Page 192</p> <p>1 have invited or allowed nonprescribers to attend  2 speaker program events; do you recall that opinion?  3 A. Yes.  4 Q. Can you point to any specific language in  5 Exhibits 14 through 18, the written guidance you  6 have cited, that prohibits pharmaceutical companies  7 from inviting or allowing nonprescribers to attend  8 speaker programs?  9 A. Well, there is language in the PhRMA code  10 and I believe that there is language in the OIG  11 guidance about guests, spouse, spouses, and inviting  12 prescribers for whom the content is not relevant.  13 So, I believe that material is in those  14 industry codes and in the pharmaceutical compliance  15 guidance.  16 Q. Do you believe there is any language in  17 those documents that states that nonprescribers  18 should not be allowed to attend speaker program  19 events?  20 MR. SHAH: Object to form.  21 THE WITNESS: Yes, I do. Guests, spouses,  22 persons for whom the content is not relevant.  23 BY MR. LUSKEY:  24 Q. Right. And I'm familiar with the guests  25 and spouses language, and -- and that's a fair</p>



<p style="text-align: right;">Page 193</p> <p>1 clarification. Let me try and ask my question</p> <p>2 better.</p> <p>3 Can you point to any specific language in</p> <p>4 the written guidance you have cited here, Exhibits</p> <p>5 14 through 18, that forbids pharmaceutical companies</p> <p>6 from inviting all nonprescribers to speaker program</p> <p>7 event?</p> <p>8 A. No.</p> <p>9 Q. Okay. On page 21 of your report, you opine</p> <p>10 that -- and let me see if I can point you to the</p> <p>11 right passage here. I realize I need to do a better</p> <p>12 job directing you to the specific language. One</p> <p>13 moment.</p> <p>14 All right. In the second paragraph, in the</p> <p>15 middle, you note that "Gilead did not engage in a</p> <p>16 significant level of third-party monitoring."</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do. Yes. Uh-hm.</p> <p>19 Q. Okay. Can you point to any specific</p> <p>20 language in the written guidance you have cited that</p> <p>21 requires a certain frequency of third-party</p> <p>22 monitoring of speaker programs?</p> <p>23 A. I believe the pharmaceutical compliance --</p> <p>24 the compliance guidance for pharmaceutical companies</p> <p>25 may have something in there about monitoring and</p>	<p style="text-align: right;">Page 195</p> <p>1 approved?</p> <p>2 A. That's what it said, yes.</p> <p>3 Q. Right. On page 38 of your report --</p> <p>4 A. Okay.</p> <p>5 Q. -- you opine that having the sales and</p> <p>6 marketing business units select speakers and</p> <p>7 determine the business needs of speakers is a</p> <p>8 suspect characteristic for potential AKS violations,</p> <p>9 right?</p> <p>10 A. That's correct.</p> <p>11 Q. I want to put aside the 2020 special fraud</p> <p>12 alert for a moment, which we'll come back to.</p> <p>13 Can you point to any specific language in</p> <p>14 the written guidance you have cited, Exhibits 14</p> <p>15 through 18, that was in effect during the relevant</p> <p>16 period here, that prohibits sales and marketing</p> <p>17 employees from playing a role in selecting speakers?</p> <p>18 A. I would have to go back through the OIG</p> <p>19 compliance guidance for pharmaceutical</p> <p>20 manufacturers, but I believe there is language in</p> <p>21 the -- in those regulatory guidance documents'</p> <p>22 language that concerns the use of sales -- the sales</p> <p>23 side of a business to determine who the speaker</p> <p>24 should be --</p> <p>25 Q. Well --</p>
<p style="text-align: right;">Page 194</p> <p>1 auditing.</p> <p>2 Q. You believe it speaks to or -- excuse me,</p> <p>3 strike that.</p> <p>4 You believe there's specific language that</p> <p>5 requires a certain frequency or amount of</p> <p>6 third-party monitoring?</p> <p>7 A. I'm not sure it says third-party</p> <p>8 monitoring, and I don't know -- I can't recall, at</p> <p>9 this point, whether it specifically goes into the</p> <p>10 frequency of monitoring, but -- so, no, I can't</p> <p>11 recall.</p> <p>12 Q. Okay. And then on page 31 of your report,</p> <p>13 you talk about how Gilead should not have let sales</p> <p>14 managers attend advisory board meetings, right?</p> <p>15 A. That's right.</p> <p>16 Q. Can you point to any specific language in</p> <p>17 the written guidance you've cited that prohibits</p> <p>18 sales managers from attending advisory board</p> <p>19 meetings?</p> <p>20 A. No, I don't think I can. However, I did</p> <p>21 find language in the business conduct manuals that</p> <p>22 would have said that salespersons should not be --</p> <p>23 sales personnel should not attend advisory board</p> <p>24 meetings.</p> <p>25 Q. Except for regional directors, correct, if</p>	<p style="text-align: right;">Page 196</p> <p>1 A. -- and --</p> <p>2 Q. -- let's let you review that. I don't want</p> <p>3 to hide the ball here. So let's pull up that</p> <p>4 document. I believe the one you cited was Tab 3,</p> <p>5 right, the OIG guidance?</p> <p>6 A. Yes.</p> <p>7 Q. Sorry, Exhibit 16 is what I meant. And</p> <p>8 we'll go off the record and give you -- give you a</p> <p>9 moment to review it.</p> <p>10 A. Okay. Can I drive this now or --</p> <p>11 Q. I hope so.</p> <p>12 A. Maybe not.</p> <p>13 THE VIDEOGRAPHER: Would you like me to</p> <p>14 take us off the record, Counsel?</p> <p>15 MR. LUSKEY: Yeah, let's go off the record.</p> <p>16 Thank you.</p> <p>17 THE VIDEOGRAPHER: Okay. The time is</p> <p>18 3:16 p.m. We are off the record.</p> <p>19 (Lunch break was taken from 3:16 p.m. until</p> <p>20 3:27 p.m.)</p> <p>21 THE VIDEOGRAPHER: Okay. We are back on</p> <p>22 the record and the time is 3:27 p.m.</p> <p>23 BY MR. LUSKEY:</p> <p>24 Q. Ms. Evans, now that you've had an</p> <p>25 opportunity to review Exhibit 16 off the record, can</p>

<p style="text-align: right;">Page 197</p> <p>1 you point to any specific language in the written</p> <p>2 guidance you have cited that prohibited sales and</p> <p>3 marketing employees from having a role in selecting</p> <p>4 speakers?</p> <p>5 A. No.</p> <p>6 Q. All right. On page 50 of your report, you</p> <p>7 opine that one of the reasons Gilead's compliance</p> <p>8 program was ineffective was that it failed to</p> <p>9 prevent some speaker program events from featuring</p> <p>10 alcohol.</p> <p>11 Do you recall that opinion?</p> <p>12 A. I do.</p> <p>13 Q. Can you point --</p> <p>14 A. And I'm sorry, what was -- what was your</p> <p>15 question again?</p> <p>16 Q. Oh, I haven't asked it yet.</p> <p>17 A. Oh.</p> <p>18 Q. I just asked if you recalled that opinion.</p> <p>19 Sorry.</p> <p>20 A. Yeah, uh-hm.</p> <p>21 Q. Can you point to any specific language, in</p> <p>22 the written guidance you have cited, that forbids</p> <p>23 serving alcohol at speaker program events?</p> <p>24 A. No.</p> <p>25 Q. And you also opine, in this section of your</p>	<p style="text-align: right;">Page 199</p> <p>1 issue.</p> <p>2 Q. Can you point to any specific language in</p> <p>3 the written guidance you have cited that requires</p> <p>4 pharmaceutical companies to only compensate for the</p> <p>5 portion of the program where the speaker is actually</p> <p>6 presenting?</p> <p>7 A. I don't think so, no.</p> <p>8 Q. Okay. And on pages 59 through 62 of your</p> <p>9 report, you opine that one of the reasons that</p> <p>10 Gilead's compliance practices were ineffective was</p> <p>11 because the business conduct department was not</p> <p>12 involved with the actual operation of the speaker</p> <p>13 programs or ad boards, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Can you point to any specific language in</p> <p>16 the written guidance you have cited that requires</p> <p>17 the compliance department to be directly responsible</p> <p>18 for the operation of speaker programs or advisory</p> <p>19 boards?</p> <p>20 MR. SHAH: Object to form.</p> <p>21 THE WITNESS: Well, the -- yes. With</p> <p>22 respect to the HHS-OIG compliance guidance for</p> <p>23 pharmaceutical manufacturers, there is language that</p> <p>24 states that one of the things that the compliance</p> <p>25 department should be doing is assessing the risk and</p>
<p style="text-align: right;">Page 198</p> <p>1 report, that the \$125 meal cap was excessive in</p> <p>2 certain jurisdictions, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Can you point to any specific language, in</p> <p>5 any of the written guidance you have cited, that</p> <p>6 sets a value threshold on the food that should be</p> <p>7 served at speaker program events?</p> <p>8 A. No, just that it be modest by local</p> <p>9 standards.</p> <p>10 Q. Okay. And you also opine in your report</p> <p>11 that one of the reasons Gilead's compliance program</p> <p>12 was ineffective was because some speakers were</p> <p>13 compensated for two hours of service, even though</p> <p>14 the presentation portion of the program lasted for</p> <p>15 less than two hours, correct?</p> <p>16 A. I'm sorry, can you tell me that again?</p> <p>17 Q. Yeah, no problem.</p> <p>18 You also opine in your report that one of</p> <p>19 the reasons Gilead's compliance program was</p> <p>20 ineffective was that it allowed some speak- -- it</p> <p>21 compensated some speakers for two hours of service,</p> <p>22 even though the medical or scientific presentation</p> <p>23 portion of the program lasted for less than two</p> <p>24 hours, correct?</p> <p>25 A. Yes, I felt that that was a compliance</p>	<p style="text-align: right;">Page 200</p> <p>1 then determining whether or not there are policies</p> <p>2 that deter that risk or to prevent that risk from</p> <p>3 occurring, and whether or not the policies were</p> <p>4 implemented, and, finally, whether or not they were</p> <p>5 followed.</p> <p>6 Q. Okay.</p> <p>7 A. So, yes, I think there is language in -- in</p> <p>8 the guidance --</p> <p>9 THE STENOGRAPHER: I'm sorry, you said yes?</p> <p>10 THE WITNESS: I'm sorry?</p> <p>11 THE STENOGRAPHER: So, yes, I think...</p> <p>12 THE WITNESS: There is language in the</p> <p>13 guidance that refers to the compliance department or</p> <p>14 business conduct department being involved in</p> <p>15 monitoring and addressing the risk for certain</p> <p>16 activities.</p> <p>17 BY MR. LUSKEY:</p> <p>18 Q. Can you point to any specific language, in</p> <p>19 the written guidance you have cited, that addresses</p> <p>20 minimum attendee requirements at speaker program</p> <p>21 events?</p> <p>22 A. No, I don't believe so.</p> <p>23 Q. Can you point to any specific language, in</p> <p>24 the written guidance you have cited, that states</p> <p>25 that office staff are inappropriate attendees at</p>

<p style="text-align: right;">Page 201</p> <p>1 <b>speaker program events?</b></p> <p>2 A. Again, I would point out to the -- I would</p> <p>3 point you to the PhRMA code and to the OIG</p> <p>4 compliance guidance for pharmaceutical manufacturers</p> <p>5 where it says that guests are not appropriate and</p> <p>6 that the speaker program should be designed to</p> <p>7 impart clinical, medical, scientific information</p> <p>8 designed to help the patients, and certainly the</p> <p>9 business conduct manual stated that office staff</p> <p>10 were not appropriate attendees.</p> <p>11 <b>Q. Can you cite to anything in those</b></p> <p>12 <b>documents, the written guidance documents, that</b></p> <p>13 <b>suggests, for instance, nonprescribing nurses are</b></p> <p>14 <b>categorically inappropriate attendees at speaker</b></p> <p>15 <b>program events?</b></p> <p>16 A. No.</p> <p>17 <b>Q. Okay. Is there anything -- any specific</b></p> <p>18 <b>language, in the written guidance that you have</b></p> <p>19 <b>cited, that prohibits incentive compensation plans</b></p> <p>20 <b>that are tied to prescription volumes?</b></p> <p>21 A. The OIG compliance guidance for</p> <p>22 pharmaceutical manufacturers makes a point of</p> <p>23 explaining that when sales representatives have</p> <p>24 compensation plans that are tied to their sales and</p> <p>25 they're also dealing with referral sources or</p>	<p style="text-align: right;">Page 203</p> <p>1 uses that language.</p> <p>2 <b>Q. Let's take a look at Exhibit 18, the 2009</b></p> <p>3 <b>PhRMA code. If we look at Question 16 in that</b></p> <p>4 <b>document. Take a moment to review it. And then you</b></p> <p>5 <b>can review the answer, too.</b></p> <p>6 A. And what's the question?</p> <p>7 <b>Q. So have you had a chance to review the</b></p> <p>8 <b>answer yet?</b></p> <p>9 A. Nope.</p> <p>10 <b>Q. Take your time.</b></p> <p>11 A. Okay.</p> <p>12 <b>Q. The question considers a scenario in which</b></p> <p>13 <b>prospective speakers would be selected based on</b></p> <p>14 <b>recommendations of the company's district managers</b></p> <p>15 <b>and an assessment of their qualifications by the</b></p> <p>16 <b>company's medical or scientific personnel, correct?</b></p> <p>17 A. It does.</p> <p>18 <b>Q. And the answer states that that satisfies</b></p> <p>19 <b>the provisions in the code that require potential</b></p> <p>20 <b>speakers to be selected based on defined criteria</b></p> <p>21 <b>such as medical expertise, knowledge, and</b></p> <p>22 <b>experience, correct?</b></p> <p>23 A. It -- I don't agree with your</p> <p>24 characterization of the answer. The answer doesn't</p> <p>25 really talk about the propriety of the regional</p>
<p style="text-align: right;">Page 202</p> <p>1 prescribers, that this is a high risk area and so it</p> <p>2 should be something that is managed and controlled</p> <p>3 and reviewed, audited.</p> <p>4 <b>Q. Understood. So that language does not</b></p> <p>5 <b>prohibit incentive compensation programs that are</b></p> <p>6 <b>tied to prescription volumes?</b></p> <p>7 A. That are tied to what? I'm sorry.</p> <p>8 <b>Q. Prescription volumes.</b></p> <p>9 A. No, I don't think it does.</p> <p>10 <b>Q. All right. Is there --</b></p> <p>11 A. Doesn't use those words.</p> <p>12 <b>Q. -- is there anything in the written</b></p> <p>13 <b>guidance you have cited that requires live</b></p> <p>14 <b>monitoring of advisory boards?</b></p> <p>15 A. I don't think so.</p> <p>16 <b>Q. Okay. Is there any specific language, in</b></p> <p>17 <b>any of the written guidance you have cited, that</b></p> <p>18 <b>includes a cap for advisory board payments?</b></p> <p>19 A. I don't believe so.</p> <p>20 <b>Q. Does the PhRMA code specifically allow for</b></p> <p>21 <b>district managers to nominate speakers, subject to</b></p> <p>22 <b>medical review and approval?</b></p> <p>23 A. No, I don't believe the PhRMA code talks</p> <p>24 about regional managers or regional directors. I'd</p> <p>25 have to go back and look at it, but I don't think it</p>	<p style="text-align: right;">Page 204</p> <p>1 director making the nomination. It's more is there</p> <p>2 a process by which a speaker is nominated and then</p> <p>3 approved by the medical scientists and is there --</p> <p>4 are there predefined criteria, such as medical</p> <p>5 expertise, knowledge, and experience and -- and</p> <p>6 other sorts of qualifications. It doesn't really</p> <p>7 talk about the propriety of a sales regional</p> <p>8 director. Maybe it's a marketing regional director.</p> <p>9 Maybe it's a -- I don't know. You know, what</p> <p>10 regional director.</p> <p>11 <b>Q. Okay.</b></p> <p>12 A. So I -- I hesitate to agree with your</p> <p>13 characterization of that answer.</p> <p>14 <b>Q. Okay. We could take that document down.</b></p> <p>15 <b>Finally, in your report, you also cite the</b></p> <p>16 <b>OIG special fraud alert from November 2020, correct?</b></p> <p>17 A. Right.</p> <p>18 <b>Q. And -- and that would not have been issued</b></p> <p>19 <b>until after the relevant period in this case;</b></p> <p>20 <b>correct?</b></p> <p>21 A. That's correct.</p> <p>22 <b>Q. And so, for instance, some of the things</b></p> <p>23 <b>that you talked about earlier that might have been</b></p> <p>24 <b>surprising, like, Gilead would have had no way to</b></p> <p>25 <b>know about that guidance during the relevant period</b></p>

<p style="text-align: right;">Page 217</p> <p>1 speaker programs, was too small and it was                  2 understaffed.                  3 <b>Q. What evidence did you rely on to conclude</b>                  4 <b>that Gilead's compliance department was strikingly</b>                  5 <b>similar to the compliance department described here</b>                  6 <b>overseen by a former paralegal at Teva?</b>                  7 MR. SHAH: Object to the form.                  8 THE WITNESS: But that's just one part of                  9 the opinion, but -- so, I -- as I said, I thought                  10 that in -- in both cases, the pharmaceutical company                  11 had a compliance program that was just simply too                  12 small and spread too thin to have an effective                  13 oversight role with respect to the speaker programs.                  14 For example, it would have been nice, at some point,                  15 to see -- have information that a compliance                  16 department staff member, maybe not even an attorney,                  17 but someone was actually present at one of the                  18 speaker programs. I know that they were present at                  19 speaker training, but it was pretty clear that --                  20 that even at the end of the speaker trainings, the                  21 speakers didn't know, for example, was an                  22 appropriate attendee. So I just -- I -- it was my                  23 opinion, based on the totality of the evidence that                  24 I reviewed, that both Teva and Gilead had compliance                  25 departments that were too small to really handle</p>	<p style="text-align: right;">Page 219</p> <p>1 THE WITNESS: That was my understanding,                  2 yes.                  3 BY MR. LUSKEY:                  4 <b>Q. Okay. And you said that she --</b>                  5 A. That was in -- I'm sorry, go ahead.                  6 <b>Q. You said that business conduct was present</b>                  7 <b>at speaker training, but not at speaker programs.</b>                  8 <b>You know that business conduct was present at</b>                  9 <b>advisory boards as well, correct?</b>                  10 A. They might attend an advisory board                  11 meeting. I have a vague recollection of something                  12 about that, but I can't recall the specifics of it,                  13 Mr. Luskey.                  14 <b>Q. So as you sit here today, you don't have</b>                  15 <b>sufficient information to conclude whether business</b>                  16 <b>conduct was frequently at advisory board meetings?</b>                  17 MR. SHAH: Object to form.                  18 THE WITNESS: I -- I would -- I would be --                  19 well, strike that.                  20 I -- I don't know how often they were at                  21 advisory board meetings. They might have attended                  22 sporadically, but I don't -- I don't recall it being                  23 a regular occasion.                  24 MR. LUSKEY: Okay. Let's take a look at                  25 the Gilead business conduct department here. We</p>
<p style="text-align: right;">Page 218</p> <p>1 the -- the risk.                  2 BY MR. LUSKEY:                  3 <b>Q. How large was Gilead's business conduct</b>                  4 <b>department?</b>                  5 A. Well, the business conduct --                  6 MR. SHAH: Object -- object to the form.                  7 You can answer. Sorry.                  8 THE WITNESS: I'm sorry.                  9 As I understand it, from Erica Chien, there                  10 was one person over a seven-year period who was a                  11 full-time -- detailed full time to that particular                  12 franchise, the HBV franchise. There were -- there                  13 was one person in the beginning, 2013, and that                  14 eventually expanded to, I think, seven individuals                  15 over a seven-year period, but those individuals had                  16 responsibilities for the other franchises as well.                  17 So there was really just one person who was dealing                  18 with HBV.                  19 BY MR. LUSKEY:                  20 <b>Q. That's how you read -- that's how you read</b>                  21 <b>Ms. Chien's testimony? You believed that at the</b>                  22 <b>beginning of the review period, there was just one</b>                  23 <b>business conduct person who had any responsibility</b>                  24 <b>for HBV?</b>                  25 MR. SHAH: Object to form.</p>	<p style="text-align: right;">Page 220</p> <p>1 will introduce as Exhibit 20, Tab 96.                  2 (Exhibit 20 was marked for identification.)                  3 BY MR. LUSKEY:                  4 <b>Q. And in Tab 96, we are going to flip to</b>                  5 <b>Slide 2. Thank you. We can blow that up a little</b>                  6 <b>bit.</b>                  7 A. Oops.                  8 <b>Q. Ms. Evans, for the record, Exhibit 20 is a</b>                  9 <b>slide deck, "Business Conduct Planning and</b>                  10 <b>Principles, Process and Documentation." The version</b>                  11 <b>I have --</b>                  12 A. Excuse me, I'm sorry, I'm not -- on my                  13 screen, I have a copy of my report. I don't know                  14 what happened there.                  15 Is that --                  16 <b>Q. We'll get that fixed.</b>                  17 A. Okay.                  18 MS. RAND: Can you let me know if you can                  19 see it now?                  20 THE WITNESS: I can't.                  21 MR. LUSKEY: Huh. Let's go off the record.                  22 We'll fix it.                  23 THE WITNESS: Okay.                  24 THE VIDEOGRAPHER: The time is 4:01 p.m.                  25 We are off the record.</p>



<p style="text-align: right;">Page 221</p> <p>1 (Short recess was taken from 4:01 p.m.  2 until 4:01 p.m.)  3 THE VIDEOGRAPHER: Back on the record. The  4 time is 4:01 p.m.  5 BY MR. LUSKEY:  6 Q. Ms. Evans, you see on Slide 2 here, this is  7 a -- essentially an org chart of the U.S. Business  8 Conduct Team, and it's dated January 2016. If you  9 scroll to the bottom of that slide, Marnee will show  10 you that.  11 A. Okay.  12 Q. Do you see that?  13 A. Yes.  14 Q. Is this a document that you reviewed in  15 connection with your work in this matter?  16 A. I don't think I did.  17 Q. Okay. This is the first time you're seeing  18 this business conduct org chart?  19 A. I -- I can't recall. I remember seeing the  20 names, but -- sorry.  21 Q. No problem.  22 And there's David Ralston at the top, the  23 associate general counsel of business conduct,  24 right? We spoke about him earlier?  25 A. Right.</p>	<p style="text-align: right;">Page 223</p> <p>1 some of those business conduct presentations at the  2 mid-year meetings and things like that?  3 A. I do.  4 Q. All right. And that's -- so that's a  5 business conduct lawyer assigned specifically and  6 exclusively to HBV, correct?  7 A. I don't know that.  8 Q. You didn't know -- you -- that's the first  9 time -- you weren't aware that he was only assigned  10 to HBV?  11 A. No. I was not.  12 Q. Okay. And then Erica Chien is another  13 business conduct lawyer who's assigned essentially  14 to two liver areas, HCV and HBV; is that fair?  15 A. Right.  16 Q. Okay. And then on the right side of the  17 slide over here, you see some names like Dale Mehr  18 and Courtney Desmond. Are those names that you  19 recognize from your review of compliance materials  20 in this case?  21 A. The only two that I -- I remember seeing  22 information about were the -- the monitoring  23 managers, Courtney Desmond and Dana Emadz- --  24 Q. Uh-hm. You certainly understood that they  25 played a role in the HBV therapeutic area, correct?</p>
<p style="text-align: right;">Page 222</p> <p>1 Q. He was the one that sent out that repeat  2 attendees policy change in October 2015; does that  3 sound right?  4 A. Yes.  5 Q. All right. And then you see he has a few  6 direct reports. Those are all counsel roles, right,  7 so all lawyers?  8 A. Right.  9 Q. And then you'll see that one of those  10 lawyers is Erica Chien, whose deposition you  11 reviewed, correct?  12 A. Right.  13 Q. So she was --  14 A. Yes.  15 Q. -- senior counsel in the liver disease  16 unit; is that right?  17 A. Yes.  18 Q. Overseeing the HBV therapeutic area,  19 correct?  20 A. Yes.  21 Q. And then below her, you've got an  22 individual named Greg Sicilian, who was counsel in  23 the HBV area; is that right?  24 A. Yes.  25 Q. Is that a name you recognize from seeing</p>	<p style="text-align: right;">Page 224</p> <p>1 A. No, I understood that they received the  2 monitoring reports from Polaris and I don't know  3 what happened to them after that point, but I -- I  4 never had any sense that either Ms. Desmond or Dana  5 provided the information back down to the sales  6 representatives or their directors to help them  7 manage the speaker programs more efficiently, more  8 compliantly, no.  9 Q. Right. And -- and you've already testified  10 that you didn't review the privilege log before  11 your -- offering your opinion in this case and  12 hadn't seen the dozen of examples of Courtney  13 Desmond sending monitoring reports to the NACRC and  14 otherwise that we looked at today, correct?  15 MR. SHAH: Object to form.  16 THE WITNESS: I remember seeing the  17 privilege log.  18 BY MR. LUSKEY:  19 Q. And so -- but back to my question, based on  20 your review of materials in this case, is it your  21 understanding that Courtney Desmond and Dana  22 Emadzadeh had some responsibility for the HBV  23 therapeutic area?  24 A. It was my understanding that they had  25 responsibility for all franchises with respect to</p>

<p style="text-align: right;">Page 257</p> <p>1 believe it was the testimony -- testimony of Marc  2 Aquino about one of his therapeutic specialists who  3 wanted to add a Dr. Raven- -- Ravensteyn, I think  4 was his name, because he was a believer and I think  5 we'll make him a speaker, is what she says, so that  6 he'll believe even more. And the point of her  7 business plan was to increase his prescriptions.  8       There were also other instances in the  9 documents that I reviewed, the testimony and the  10 evidence, that indicated to me that making a  11 physician a speaker was something that was going to  12 be beneficial to the speaker and would also be  13 something that could be used to increase their  14 willingness to prescribe Viread or VEM- -- VEMLIDY,  15 depending on what drug was being promoted.  16 <b>Q. Right, and this is your chance to get all</b>  17 <b>those instances out there.</b>  18 <b>You've given me Dr. Ravensteyn, and the</b>  19 <b>Marc Aquino example, and then the Dr. Iskandarani</b>  20 <b>e-mail, which we've just reviewed.</b>  21 <b>Any others?</b>  22 A. Well, I'm sure there are others and they're  23 in my report and I have -- I did not name all of the  24 documents that I reviewed in my report, did not cite  25 them all, but I found lots of evidence to suggest</p>	<p style="text-align: right;">Page 259</p> <p>1 <b>correct?</b>  2 A. I recall that she testified something to  3 that effect, but I don't recall any specifics.  4 <b>Q. Okay. And you don't -- and you don't</b>  5 <b>believe her, correct?</b>  6 A. I tried not to make a judgment as to the  7 veracity of what people testified to. I just look  8 at all the facts and the circumstances, and maybe  9 she was mistaken. I'm not going to say that  10 somebody was being untruthful. So...  11 <b>Q. Well, it -- but in this instance, you have,</b>  12 <b>in fact, concluded that you don't believe her,</b>  13 <b>correct?</b>  14 MR. SHAH: Object to form.  15 THE WITNESS: I didn't say that.  16 BY MR. LUSKEY:  17 <b>Q. Well -- well, she testified that one of the</b>  18 <b>reasons Dr. Iskandarani was added was not to</b>  19 <b>increase his market share and you've seen -- and</b>  20 <b>you've concluded in your report that it was, right?</b>  21 A. Yes, I did.  22 <b>Q. Okay. And is there any contrary deposition</b>  23 <b>testimony from anyone in this case that supports</b>  24 <b>your opinion?</b>  25 A. About Dr. Isk- --</p>
<p style="text-align: right;">Page 258</p> <p>1 that that's what was going on.  2 <b>Q. But I've reviewed your report, these are</b>  3 <b>the documents you cite in this section to</b>  4 <b>substantiate your point that speaker selection was</b>  5 <b>being used to induce prescriptions. Are there --</b>  6 <b>are there any -- is there anything else out there,</b>  7 <b>other than what you've told me about?</b>  8 MR. SHAH: Object to form.  9 THE WITNESS: Well, certainly the  10 conversation that you started with, sir, when you  11 were citing to -- I believe it was Ms. Groome and  12 one of her TSs who said, you know, no talks -- no  13 scripts, no talks.  14 MR. LUSKEY: Good point, I agree with you.  15 That is -- that is a pretty clear example.  16 All right. Let's keep marching through.  17 BY MR. LUSKEY:  18 <b>Q. And you cite to Ms. Larson's deposition</b>  19 <b>testimony with respect to this particular exhibit as</b>  20 <b>well relating to Dr. Iskandarani, right?</b>  21 A. Right.  22 <b>Q. You recall that Ms. Larson testified --</b>  23 <b>testified that increasing his prescript- --</b>  24 <b>prescriptions and his market share was not one of</b>  25 <b>the reasons he was nominated to be a speaker,</b></p>	<p style="text-align: right;">Page 260</p> <p>1 <b>Q. Correct.</b>  2 A. -- Iskandarani?  3 <b>Q. (Counsel nods head.)</b>  4 A. I don't know. I haven't seen much else. I  5 didn't run Dr. Iskandarani's name through the list  6 and stuff, so, no, I can't think of anything at this  7 point.  8 <b>Q. All right. So you looked at that</b>  9 <b>attachment and based on your interpretation of that</b>  10 <b>attachment, you concluded that Ms. Larson's</b>  11 <b>testimony was not credible?</b>  12 A. I did not conclude that.  13 <b>Q. Then how did you reach your opinion that</b>  14 <b>the reason he was added was, in fact, to increase</b>  15 <b>his prescriptions?</b>  16 A. I had a difference of opinion.  17 <b>Q. A difference of opinion with Ms. Larson's</b>  18 <b>under-oath testimony?</b>  19 A. That's correct.  20 <b>Q. Okay. And you're certainly not making any</b>  21 <b>credibility assessments as an expert, right?</b>  22 A. No, I would -- no, I'm not.  23 <b>Q. Okay. And then you cite, in your report at</b>  24 <b>page 36, a number of these opinion leader engagement</b>  25 <b>spreadsheets. I'm not going to pull them all up. I</b></p>



<p style="text-align: right;">Page 293</p> <p>1 A. I didn't --</p> <p>2 MR. SHAH: Object to form of the question.</p> <p>3 THE WITNESS: I did not make a -- an</p> <p>4 assessment as to credibility. I --</p> <p>5 MR. LUSKEY: Okay.</p> <p>6 THE WITNESS: -- I understood that some</p> <p>7 people may be incorrect in their testimony; they may</p> <p>8 have misunderstood things. I don't know, but what I</p> <p>9 can say is that if you have a compliance program and</p> <p>10 whether or not people are abiding by the terms of</p> <p>11 the compliance program is secret, then that's not</p> <p>12 exactly a fulsome way to make the -- the program</p> <p>13 effective.</p> <p>14 BY MR. LUSKEY:</p> <p>15 <b>Q. Okay. And you -- you're aware that</b></p> <p>16 <b>business conduct was involved in speaker training,</b></p> <p>17 <b>obviously, right?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Okay. And -- and I think you've already</b></p> <p>20 <b>testified that you are aware that business conduct</b></p> <p>21 <b>at least occasionally attended advisory boards. You</b></p> <p>22 <b>said you didn't know how frequently, right?</b></p> <p>23 A. Right, I recall some testimony, yeah.</p> <p>24 <b>Q. All right. Your opinion that the marketing</b></p> <p>25 <b>department, and not the business conduct department,</b></p>	<p style="text-align: right;">Page 295</p> <p>1 basically out there on their own, trying to figure</p> <p>2 out how to do something that, frankly, ran counter</p> <p>3 to the business conduct manual, which --</p> <p>4 <b>Q. Understood.</b></p> <p>5 A. -- said invite prescribers.</p> <p>6 <b>Q. Understood.</b></p> <p>7 <b>And are you familiar with OIG guidance that</b></p> <p>8 <b>the involvement of sales and marketing personnel is</b></p> <p>9 <b>key to a successful compliance program?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. And you agree with that, correct?</b></p> <p>12 A. I do.</p> <p>13 <b>Q. Your testimony here today is not that sales</b></p> <p>14 <b>and marketing should have no role in terms of</b></p> <p>15 <b>applying and enforcing compliance programs and</b></p> <p>16 <b>policies as they relate to speaker programs, right?</b></p> <p>17 A. That is not my testimony.</p> <p>18 <b>Q. Okay. All right. A few questions about</b></p> <p>19 <b>venues. I'm going to cover this pretty quickly.</b></p> <p>20 <b>So you opine in your report that Gilead's</b></p> <p>21 <b>compliance program was ineffective because it --</b></p> <p>22 <b>some of the venues provided an entertainment</b></p> <p>23 <b>experience for the attendees.</b></p> <p>24 <b>This is on page -- that's the language you</b></p> <p>25 <b>use on page 12. What did you mean by an</b></p>
<p style="text-align: right;">Page 294</p> <p>1 <b>oversaw the speaker programs and advisory boards,</b></p> <p>2 <b>what government, OIG, DOJ guidance would you point</b></p> <p>3 <b>to to suggest that the legal or compliance</b></p> <p>4 <b>department should run speaker programs?</b></p> <p>5 A. I don't -- I -- I -- I can point you to</p> <p>6 the -- excuse me, HSS-OIG compliance guidance for</p> <p>7 pharmaceutical manufacturers which put the</p> <p>8 compliance officer and the compliance department</p> <p>9 kind of at the head, if you will, of a compliance</p> <p>10 program, and it is ultimately their responsibility,</p> <p>11 under the OIG guidance, to be -- to make sure that</p> <p>12 the compliance program is supported by policies,</p> <p>13 that there are policies covering the risks, that the</p> <p>14 policies are risk based, that the risks -- excuse</p> <p>15 me, that the policies are being followed and</p> <p>16 implemented, and if there are missing policies, then</p> <p>17 to address those and -- and address the new -- newly</p> <p>18 arising risks.</p> <p>19 And in this case, I did not see that. I</p> <p>20 saw therapeutic specialists and others who are left</p> <p>21 to their own discretion and were biased because they</p> <p>22 were trying to get the prescribers that they were</p> <p>23 nominating as speakers to write prescriptions so</p> <p>24 they could get more compensation. They were biased.</p> <p>25 I didn't see any controls over that. They were</p>	<p style="text-align: right;">Page 296</p> <p>1 <b>entertainment experience?</b></p> <p>2 A. Well, I think we talked about the open bar</p> <p>3 on March -- in March of 2005 for Dr. Hee, but there</p> <p>4 were other, you know, sort of high-end -- I think</p> <p>5 there was one at The Palm where the steaks were \$100</p> <p>6 and lobsters and -- you know, the experience of</p> <p>7 dining out at a fancy restaurant is in -- in -- it</p> <p>8 may be, in itself, entertainment and that's not</p> <p>9 consistent with the PhRMA code, which says that</p> <p>10 meals should be modest and entertainment is not</p> <p>11 appropriate.</p> <p>12 <b>Q. Okay. So when you said that Gilead</b></p> <p>13 <b>provided an entertainment experience, you were</b></p> <p>14 <b>referring to instances like that where it was a nice</b></p> <p>15 <b>dinner?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. Okay. And further on, on page 12 of your</b></p> <p>18 <b>report, you opined that Gilead held speaker programs</b></p> <p>19 <b>and ad board meetings at high-end venues.</b></p> <p>20 <b>What did you mean by that?</b></p> <p>21 A. Well -- excuse me. I think places like</p> <p>22 Ruth's Chris and The Palm, you know, very nice</p> <p>23 restaurants.</p> <p>24 <b>Q. What is the basis of your opinion that Ruth</b></p> <p>25 <b>Chris is a world-renowned, high-end restaurant? I</b></p>

<p style="text-align: right;">Page 301</p> <p>1 believe, was explaining that it was no longer  2 necessary to limit speaker programs or ad boards --  3 or speaker training, maybe, to venues that were  4 either casinos, golf clubs, golf courses, or -- I  5 forget the other one. I don't think it was resorts,  6 but it might have been.  7 <b>Q. Out of the 3,300 or so speaker programs at</b>  8 <b>issue in this case, how many did you identify that</b>  9 <b>were held at casinos, golf clubs, or resorts?</b>  10 A. I didn't make a calculation.  11 <b>Q. You just -- you just cited to that one in</b>  12 <b>your report, correct?</b>  13 A. But there were -- there were many others.  14 <b>Q. Oh, really? Tell us about the others. I</b>  15 <b>haven't seen any others.</b>  16 A. Oh, I'm sorry, casinos, golf clubs, or  17 resorts?  18 <b>Q. Yes.</b>  19 A. Oh, I'm sorry, no. I misunderstood you.  20 <b>Q. It was just that one, correct?</b>  21 A. That I'm aware of, yes.  22 <b>Q. That one is on page 50 of your report. You</b>  23 <b>opine that Gilead allowed exceptions to the speaker</b>  24 <b>program policies prohibiting meals at fancy venues,</b>  25 <b>golf clubs, or resorts and then you cite to</b></p>	<p style="text-align: right;">Page 303</p> <p>1 A. Not that come to mind immediately, so, no.  2 <b>Q. All right. You opine about the \$125 per</b>  3 <b>person meal cap, including food. Your -- your</b>  4 <b>testimony is that you -- you view that as excessive;</b>  5 <b>is that correct?</b>  6 A. Yes.  7 <b>Q. The other companies that you have counseled</b>  8 <b>in this area, do they also have meal caps?</b>  9 A. Yes.  10 <b>Q. Approximately what were those meal caps?</b>  11 A. About the same.  12 <b>Q. Okay.</b>  13 A. 1- -- 125. Yep.  14 <b>Q. Did you say -- did you tell them they</b>  15 <b>needed to bring that number down; it was too high?</b>  16 MR. SHAH: Object to form.  17 THE WITNESS: No, I didn't; however, were I  18 to provide counsel to organizations that were in a  19 different geographic region, I might reconsider.  20 BY MR. LUSKEY:  21 <b>Q. Okay. What should that number have been,</b>  22 <b>from your -- in your expert opinion?</b>  23 A. I'm sorry?  24 <b>Q. What should that meal cap per person number</b>  25 <b>have been, in your expert opinion?</b></p>
<p style="text-align: right;">Page 302</p> <p>1 <b>Ms. Larson's deposition testimony about a speaker</b>  2 <b>program that was done with the Philippine Nurses</b>  3 <b>Association. Does that ring a bell?</b>  4 A. Oh, I thought I was talking about the one  5 at the Innisbrook Golf and Spa Resort. Is that the  6 same one?  7 <b>Q. It is. I believe we're talking about the</b>  8 <b>same event, that's correct.</b>  9 A. Okay.  10 <b>Q. And you recall that that event was done in</b>  11 <b>conjunction with the Philippine Nurses Association,</b>  12 <b>a third party?</b>  13 A. I have a vague recollection. Yes.  14 <b>Q. You remember that when Ms. Larson was asked</b>  15 <b>about this particular event, she said that Gilead</b>  16 <b>had no control over a responsibility for where the</b>  17 <b>association was having this meeting?</b>  18 A. I don't recall that, sir.  19 <b>Q. Okay. And in that one instance, business</b>  20 <b>conduct considered and accepted the exception; is</b>  21 <b>that correct?</b>  22 A. That's my understanding, yes.  23 <b>Q. Did you find any other examples where</b>  24 <b>business conduct allowed an exception to the golf</b>  25 <b>clubs or resorts policy?</b></p>	<p style="text-align: right;">Page 304</p> <p>1 MR. SHAH: Object to form.  2 THE WITNESS: I don't know. I'm not a  3 meeting planner, but, you know, it would seem to me  4 that in certain areas, you could have a modest  5 dinner for less than 125.  6 BY MR. LUSKEY:  7 <b>Q. Okay. That would include the dinner and</b>  8 <b>the beverage and the tax and the tip, correct?</b>  9 A. That's correct.  10 <b>Q. Okay. And did you review the -- the</b>  11 <b>deposition transcript of Kimberly Groome where she</b>  12 <b>testified that the next company she went to after</b>  13 <b>Gilead had \$145 meal cap?</b>  14 A. No, I did not -- I -- I may have read that,  15 but I don't remember it.  16 <b>Q. I assume you would also opine that that is</b>  17 <b>excessive, correct?</b>  18 A. I'm sorry?  19 <b>Q. I assume that you would -- you would opine</b>  20 <b>that that meal cap is also excessive, correct?</b>  21 A. If it was national and not consistent with  22 modest-level standards, yes.  23 <b>Q. Did you review Ms. Groome's testimony where</b>  24 <b>she testified that she thought Gilead actually did a</b>  25 <b>nice job of enforcing the meal cap limits?</b></p>

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1 A. No, I don't -- I did review it, but I -- I  
2 can't recall that.  
3 **Q. Do you disagree with that testimony?**  
4 A. No, I think they actually went over the  
5 limit pretty frequently.  
6 **Q. And when they went over the limit, did you**  
7 **identify examples of e-mail notifications that would**  
8 **go out, including business conduct, and coaching,**  
9 **even when they went over the limit by only a few**  
10 **dollars?**  
11 A. I did see e-mails involving coaching and  
12 admonitions to therapeutic specialists that they  
13 were over the meal limit and -- and exchanges, you  
14 know, with their supervisors, yes.  
15 **Q. Okay. All right. Let's take a break and**  
16 **go off the record.**  
17 A. Okay.  
18 THE VIDEOGRAPHER: Okay. The time is  
19 6:02 p.m.  
20 We are off the record.  
21 (Short recess was taken from 6:02 p.m.  
22 until 6:09 p.m.)  
23 THE VIDEOGRAPHER: Okay. We're back on the  
24 record and the time is 6:09 p.m.  
25 ///

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1 BY MR. LUSKEY:  
2 **Q. Ms. Evans, on page 22 of your report, you**  
3 **opine that Ms. Larson acted either recklessly or**  
4 **willfully in a certain respect. What did you mean**  
5 **by "recklessly"?**  
6 A. Find where we are.  
7 **Q. Oh, yeah, it's the last sentence of the**  
8 **first full paragraph.**  
9 MR. SHAH: On page 22?  
10 MR. LUSKEY: Correct.  
11 THE WITNESS: Yes. Well --  
12 BY MR. LUSKEY:  
13 **Q. And just before you answer, my only**  
14 **question is what you meant -- how you define the**  
15 **term "recklessly."**  
16 A. So, she either knew that the business  
17 conduct manual prohibited persons who were  
18 nonprescribers from attending the speaker programs  
19 and just decided to do it anyway, or she -- or she  
20 ignored the fact intentionally because she had some  
21 sort of animus, I don't know, or some sort of  
22 intent. So I just don't know the answer to that  
23 question, but "recklessly" would be knew it and just  
24 didn't pay attention to it.  
25 **Q. Okay. And "willful" would be that she**

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1 **acted intentionally in bad faith, essentially?**  
2 A. Right.  
3 **Q. And that's an opinion that you plan to**  
4 **offer in this case at trial?**  
5 A. Well, I'm not going to offer either  
6 recklessly or willfully 'cause I don't know, but  
7 certainly the business conduct manual stated that  
8 prescribers should be invited to speaker programs,  
9 and not nonprescribers and not office staff  
10 receptionists. So she either ignored that or maybe  
11 she didn't know about it and didn't check. I don't  
12 think so, but --  
13 **Q. Okay. And you -- you've reviewed the**  
14 **testimony of Erica Chien, Gilead's person most**  
15 **knowledgeable and 30(b)(6) witness on this topic,**  
16 **who -- who testified that the business conduct**  
17 **manual did not prohibit invitations to**  
18 **nonprescribers, correct?**  
19 A. That's not the way I read the business  
20 conduct manual, sir.  
21 **Q. I understand that. That wasn't my**  
22 **question. My question was whether you read Erica**  
23 **Chien's testimony on that topic.**  
24 A. I believe I did, yes.  
25 **Q. Okay. But you -- and notwithstanding that**

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1 **testimony, you think -- you still think Ms. Larson**  
2 **was either reckless or willful for having that same**  
3 **view?**  
4 A. Yes, I think so.  
5 **Q. Okay. And I asked you a second ago if that**  
6 **was the testimony you plan to offer in this case and**  
7 **I'm not sure I understood your answer.**  
8 A. Well, I -- I don't know what her motivation  
9 was in ignoring what the business conduct manual  
10 plainly prohibited, so -- or whether she was  
11 mistaken in her understanding of it, so I just don't  
12 know the answer to that. I couldn't testify whether  
13 she was reckless or willful. It -- it just appears  
14 to me that she was either one or the other. And  
15 that's --  
16 **Q. So that is not -- so that is not an opinion**  
17 **you plan to offer in this case, even though it's in**  
18 **your expert report?**  
19 A. That she was either reckless or willful?  
20 **Q. That's correct.**  
21 A. No, I -- I stand by that. Yes, I would --  
22 **Q. Oh, I -- go on.**  
23 A. Yeah, I would stand by that, yes.  
24 **Q. I know you stand by it. My question is:**  
25 **Is it an opinion you plan to offer in this case?**

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1 A. Right. Uh-hm.  
2 **Q. Okay. And is there anything in this**  
3 **document that shows Gilead conducting a**  
4 **return-on-investment analysis for ad boards?**  
5 A. Well, I -- I probably misspoke in my -- in  
6 my report when I said "return on investment." I  
7 think what I was pointing to is that they were  
8 looking at the prescribing behavior and prescribing  
9 patterns and -- and trying to get people who had not  
10 been to an ad board and a speaker program to -- to  
11 nominate them as speakers. So I guess my point in  
12 the report was that they were, in fact, tracking the  
13 prescriptions and the prescribing behavior and that  
14 volume and value.  
15 **Q. Okay. So you agree with me that there's**  
16 **nothing in this document that shows Gilead**  
17 **performing a return-on-investment analysis for**  
18 **advisory boards, correct?**  
19 A. In that document, no.  
20 **Q. Okay. Have you seen any documents in this**  
21 **case that substantiate your opinion that Gilead**  
22 **performed return-on-investment analysis for --**  
23 **analyses for ad boards?**  
24 A. I can't recall anything specific at this  
25 point.

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1 **Q. Okay. You could take this one down.**  
2 **You earlier testified that Gilead did this**  
3 **on a regular basis. No documents you can point to**  
4 **to substantiate that testimony?**  
5 A. Well, I would go back to my testimony that  
6 on a regular basis -- I think many folks testified  
7 that Gilead knew on a weekly, maybe even a daily  
8 basis, what particular prescribers in a territory  
9 were doing, in terms of not only the Gilead product,  
10 but also their competitor products, and -- and they  
11 did judge -- in fact, I think Leilani Larson  
12 testified that there was, in fact, a  
13 return-on-investment analysis done at some point. I  
14 don't recall if it was ad boards or speaker  
15 programs, but --  
16 **Q. Are you -- are you thinking of the**  
17 **return-on-investment analyses -- analysis that she**  
18 **testified to about speaker program attendees, the**  
19 **one that you cite in your expert report?**  
20 A. I believe that might be it. And -- yeah, I  
21 just -- I'm sorry, I can't recall.  
22 **Q. No problem. Certainly nothing**  
23 **inappropriate about doing a return-on-investment**  
24 **analysis for attendees, right?**  
25 A. Well, if your business conduct manual says

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1 don't do return on analysis of speakers because that  
2 is -- and the reason behind that policy is because  
3 it's going to make it look like you're selecting  
4 speakers on the basis of the volume and -- and value  
5 of their prescriptions, and then you turn around and  
6 do a -- an analysis of the prescribing behavior of  
7 everybody who was attend -- was an attendee, at the  
8 same time sweeping in those speakers who were also  
9 attendees -- or those attendees who were also  
10 speakers, I got that backwards, then you would, in  
11 fact, be doing a return-on-investment analysis that  
12 would capture the speakers' prescribing behavior.  
13 **Q. Not after they spoke, but after they**  
14 **attended an event, right?**  
15 A. Well, somehow it made -- I mean, they were  
16 speakers, so they must have spoken --  
17 **Q. Yeah.**  
18 A. -- must have been speakers at some point  
19 because they're also attendees.  
20 **Q. Right. Right. So going back to your**  
21 **opinion, that you state in a -- on page 30 of your**  
22 **report, that "Gilead conducted a**  
23 **return-on-investment analysis of ad board**  
24 **participants," I'm not hearing any clear bases for**  
25 **that opinion as we sit here today. Is there**

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1 **anything you can point me to?**  
2 MR. SHAH: Object to the form.  
3 THE WITNESS: I can't recall.  
4 BY MR. LUSKEY:  
5 **Q. Okay. No problem.**  
6 **Earlier we talked, in passing, briefly**  
7 **about the Sam Lee investigation. Let's just cover**  
8 **that briefly. You -- you cite to the Sam Lee**  
9 **allegations on page 37 of your report, and you note**  
10 **on page 37 of your report that you believe that**  
11 **these allegations were not responded today**  
12 **appropriately, correct?**  
13 A. That's right.  
14 **Q. And you -- you certainly understand that**  
15 **that investigation was conducted under privilege at**  
16 **Gilead, correct?**  
17 A. Yes.  
18 **Q. And so you don't have any visibility into**  
19 **how many employees were interviewed, correct?**  
20 A. Right.  
21 **Q. And you wouldn't know which documents the**  
22 **Gilead legal team reviewed in order to investigate**  
23 **those allegations, right?**  
24 A. That's correct.  
25 **Q. Do you know how long the investigation**



<p style="text-align: right;">Page 317</p> <p>1 took?</p> <p>2 A. No, I don't.</p> <p>3 Q. Okay. And --</p> <p>4 A. I don't know that there was an</p> <p>5 investigation, so...</p> <p>6 Q. Well, you -- you do 'cause you reviewed the</p> <p>7 Sam Lee deposition transcript, right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And you recall him talking --</p> <p>10 A. Okay, yeah. Okay.</p> <p>11 Q. That's fair. You recall him talking about</p> <p>12 him being interviewed --</p> <p>13 A. Right.</p> <p>14 Q. -- and getting the closeout letter?</p> <p>15 A. Right.</p> <p>16 Q. Okay. How can you offer a reliable expert</p> <p>17 opinion that these allegations were not responded to</p> <p>18 appropriately, if you don't have access to that</p> <p>19 privileged internal investigation file?</p> <p>20 MR. SHAH: Object to form.</p> <p>21 THE WITNESS: All right, so the point that</p> <p>22 I was making here is that when Sam Lee made these</p> <p>23 allegations against his therapeutic specialist's</p> <p>24 partner, Ms. Chien, they were specific -- they were</p> <p>25 corroborated by some information that he had also</p>	<p style="text-align: right;">Page 319</p> <p>1 sample of the speaker programs that were hosted by</p> <p>2 Ms. Chien, perhaps do a sample of the speaker</p> <p>3 programs involving particular speakers, you know,</p> <p>4 parse the information down a little bit and use it</p> <p>5 from a compliance standpoint, not only just</p> <p>6 investigating for the compliance breach, but using</p> <p>7 the information to come up with policies, to come up</p> <p>8 with, you know, some reports that could be, without</p> <p>9 violating privilege, disseminated down to the</p> <p>10 therapeutic specialists so that this kind of</p> <p>11 behavior wouldn't happen again.</p> <p>12 BY MR. LUSKEY:</p> <p>13 Q. And you don't -- you don't know whether</p> <p>14 Gilead did such an audit of Ms. Chien's programs, do</p> <p>15 you?</p> <p>16 A. I -- I have not seen anything to indicate</p> <p>17 that that was the case, no.</p> <p>18 Q. Right. And is it appropriate, from your</p> <p>19 perspective, for a company to conduct internal</p> <p>20 investigations in a privileged fashion?</p> <p>21 A. It is, yes.</p> <p>22 Q. Have you ever done that?</p> <p>23 A. I have done that.</p> <p>24 Q. All right. And you say that --</p> <p>25 A. I have also -- never mind.</p>
<p style="text-align: right;">Page 318</p> <p>1 provided and some information that was independent</p> <p>2 of Mr. Lee's statements, so not knowing, under</p> <p>3 privileged, what Gilead did with that information,</p> <p>4 what we do know is that the information that was</p> <p>5 provided by Mr. Lee should have caused additional</p> <p>6 review of -- in my opinion, should have caused</p> <p>7 additional review of the programs that were being</p> <p>8 hosted by Catherine Chan, at the very least, and if</p> <p>9 that had happened, perhaps some of the -- the more</p> <p>10 egregious speaker programs would have been</p> <p>11 determined at that point, some of the more egregious</p> <p>12 compliance violations.</p> <p>13 BY MR. LUSKEY:</p> <p>14 Q. It -- it sounds like you're saying that the</p> <p>15 allegations in the e-mail looked serious and</p> <p>16 credible to you and it was surprising that there</p> <p>17 wasn't a negative finding and corrective actions at</p> <p>18 the end of it; is that your testimony?</p> <p>19 A. No. My testimony --</p> <p>20 MR. SHAH: Object to form.</p> <p>21 Go ahead and answer.</p> <p>22 THE WITNESS: I'm sorry. My testimony is</p> <p>23 that a -- an efficient, effective compliance program</p> <p>24 would have taken those allegations made involving</p> <p>25 Ms. Chien and used them as the basis to perhaps do a</p>	<p style="text-align: right;">Page 320</p> <p>1 Q. Okay. On page 86 of your report, you say</p> <p>2 that you sort of re- -- reiterate Mr. -- or you</p> <p>3 summarize Mr. Lee's allegations and you note that</p> <p>4 Mr. Lee -- sorry. You say: "Contemporaneous</p> <p>5 records confirm that the dates and 'speakers'</p> <p>6 identified by Mr. Lee were accurate. Mr. Lee also</p> <p>7 described an event in November 2013 at which close</p> <p>8 to 20 inappropriate attendees were present."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And you read Mr. Lee's deposition testimony</p> <p>12 where he said he got that wrong, correct?</p> <p>13 A. Yes. Uh-hm.</p> <p>14 Q. Okay. All right. And when you describe</p> <p>15 this investigation as superficial, how are you</p> <p>16 able -- how are you able to conclude it was</p> <p>17 superficial without knowing what investigative steps</p> <p>18 were taken?</p> <p>19 A. Well, I did not -- the only information</p> <p>20 that I had, other than Mr. Lee's deposition, was the</p> <p>21 investigation of Ms. Chien and sort of the -- I</p> <p>22 believe Mr. Johnson may have testified about it as</p> <p>23 well, and everybody took the position that, well,</p> <p>24 this was thoroughly investigated and there was no --</p> <p>25 there was nothing to what Mr. Lee was saying.</p>

<p style="text-align: right;">Page 329</p> <p>1 and spouse, and partners prohibition.                  2 <b>Q. No, no, that -- that doesn't answer the</b>                  3 <b>question. I understand that those languages</b>                  4 <b>saying -- there's language saying that, you know,</b>                  5 <b>you can't have guests, and family members, and</b>                  6 <b>spouses.</b>                  7 <b>My question is: Are you aware of any</b>                  8 <b>language, in any guidance coming from the</b>                  9 <b>government, that says only prescribers are allowed</b>                  10 <b>to attend speaker programs?</b>                  11 A. I am not aware of any specific guidance                  12 that says that, no.                  13 <b>Q. Okay.</b>                  14 MR. SHAH: Hey, Randy, not to interrupt,                  15 but -- and I certainly don't have Spencer's gift for                  16 precision, but -- I have very few gifts in general,                  17 but we probably don't need to speak about that, but                  18 I think we're at the seven-hour mark, so...                  19 MR. LUSKEY: Understood. Really appreciate                  20 your time today, Ms. Evans. Those are all the                  21 questions I have.                  22 THE WITNESS: Thank you, sir.                  23 MR. SHAH: Thanks. I don't have any                  24 questions for the witness.                  25 Randy, it was nice to see you.</p>	<p style="text-align: right;">Page 331</p> <p>1 THE STENOGRAPHER: I do have some e-mails.                  2 I don't know if I have your e-mail, but I can find                  3 it on the Orrick website.                  4 Mr. Shah, would you like a rough copy?                  5 MR. SHAH: Yes, thank you. And you have my                  6 e-mail?                  7 THE STENOGRAPHER: Yes, I believe so.                  8 MS. RAND: I've just added our e-mails in                  9 the chat.                  10 THE STENOGRAPHER: Thank you.                  11 (THE VIDEOTAPED EXPERT DEPOSITION OF                  12 VIRGINIA B. EVANS WAS CONCLUDED AT                  13 6:40 p.m.)                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>
<p style="text-align: right;">Page 330</p> <p>1 MR. LUSKEY: You as well.                  2 MR. SHAH: Monica, Spencer, thank you for                  3 your time.                  4 And everyone, be well.                  5 Randy, hopefully no -- no vomiting                  6 incidences at home tonight for your sake.                  7 MR. LUSKEY: I hope you're right about                  8 that. Take care.                  9 THE VIDEOGRAPHER: Off the record, Counsel?                  10 MR. LUSKEY: Yeah.                  11 THE VIDEOGRAPHER: Okay. The time is                  12 6:40 p.m.                  13 This is the end of the videotaped                  14 deposition of Virginia Evans, Volume 1, dated                  15 June 1, 2021. You're off the record.                  16 MS. RAND: Monica, this is Marnee from                  17 Orrick. I just wanted to check --                  18 Sorry, this is just for Monica. Are you                  19 going to be sending a rough transcript tonight?                  20 THE STENOGRAPHER: I will be sending it                  21 later tonight. I have an appointment, but I will                  22 send it late tonight.                  23 MS. RAND: Should I put my e-mail in the                  24 chat for you to send it to, or do you have our work                  25 e-mails?</p>	<p style="text-align: right;">Page 332</p> <p>1 STATE OF CALIFORNIA )                  )                  2 COUNTY OF SONOMA )                  3 I, Monica Lepe-Georg, a Certified Shorthand                  4 Reporter of the State of California, do hereby                  5 certify:                  6 That prior to being examined, the witness                  7 in the foregoing proceedings was by me duly sworn to                  8 testify to the truth, the whole truth, and nothing                  9 but the truth;                  10 That said proceedings were taken remotely                  11 before me at the time and places therein set forth                  12 and were taken down by me in shorthand and                  13 thereafter transcribed into typewriting under my                  14 direction and supervision;                  15 I further certify that I am neither counsel                  16 for, nor related to, any party to said proceedings,                  17 not in anywise interested in the outcome thereof.                  18 Further, that if the foregoing pertains to                  19 the original transcript of a deposition in a federal                  20 case, before completion of the proceedings, review of                  21 the transcript [ ] was [ X ] was not requested.                  22 IN WITNESS WHEREOF, I have this date                  subscribed my name.                  23 Dated: June 7th, 2021                  24                  25</p> <p style="text-align: right;">                   MONICA LEPE-GEORG, No. 11976             </p>